STATE OF NEW MEXICO
ENVIRONMENTAL IMPROVEMENT BOARD

IN THE MATTER OF PROPOSED REVISIONS TO:
20.2.70 NMAC – *Operating Permits, and*
20.2.74 NMAC – *Permits – Prevention of Significant Deterioration (PSD)*

No. EIB 12-05 (R)

NEW MEXICO ENVIRONMENT DEPARTMENT
NOTICE OF INTENT TO PRESENT TECHNICAL TESTIMONY

Pursuant to 20.1.1.302.A NMAC, The New Mexico Environment Department (NMED) Environmental Protection Division ("the Division") hereby submits its Notice of Intent to present technical testimony in this proceeding.

1. **The person for whom the witnesses will testify.**

The New Mexico Environment Department, Environmental Protection Division.

2. **The name and qualifications of each technical witness.**

Kerwin C. Singleton. Mr. Singleton is the Manager of Control Strategies Division in the Air Quality Bureau of the New Mexico Environment Department. Mr. Singleton holds a Bachelor of Science degree in Chemical Engineering from the University of Missouri – Columbia. He has over twenty years experience in air quality and regulatory compliance issues, as shown in his resume attached as Exhibit 1a.

Ned J. Jerabek. Mr. Jerabek is the Staff Manager of the Major Source Permits Section in the Air Quality Bureau of the New Mexico Environment Department. Mr. Jerabek holds a Bachelor of Science degree in Physical Science with emphasis in Atmospheric Physics and Meteorology, from Northern Arizona University in Flagstaff, Arizona. Mr. Jerabek has over thirty years experience in air quality, meteorology, regulatory, and associated issues, as shown in his resume attached as Exhibit 1b.

3. **Summary and Estimated Duration of Testimony**

Mr. Singleton's written testimony is attached as NMED Exhibit 2. Mr. Singleton's oral testimony is estimated to take approximately 10 minutes, excluding responses to Board questions.

The Division will not call Mr. Jerabek to testify unless necessitated by questions from the Board or other parties. Mr. Jerabek's expertise relevant to this hearing is in regard to the PSD and Title V permitting programs.

4. **Text of Recommended Modifications to the Proposed Regulatory Change**

The Division recommends amendment of 20.2.70 and 20.2.74 NMAC as attached as Exhibits 4 and 5 respectively.

5. **List and Description of Exhibits**

The Division submits the following exhibits:

NMED Exh. #	Description
1a	Resume of Kerwin Singleton
1b	Resume of Ned Jerabek
2	Written Testimony of Kerwin Singleton
3	Powerpoint Presentation – Open House of November 8, 2012
4	Proposed Amendments to 20.2.70 NMAC
5	Proposed Amendments to 20.2.74 NMAC
6	EPA Fact Sheet – GHG Rules of 2010, Including Tailoring Rule
7	EPA Fact Sheet – Biogenic Emissions Deferral, July 2011
8	EPA Fact Sheet – Tailoring Rule Step 3, July 2012
9	Federal Register Notice – Tailoring Rule (75 FR 31514, June 3, 2010)
10	Federal Register Notice – Biogenic Emissions Deferral (76 FR 43490, July 20, 2011)
11	Federal Register Notice – Tailoring Rule Step 3 (77 FR 41051, July 12, 2012)
12	Table Comparing 20.2.70 NMAC to 40 CFR Part 70
13	Table Comparing 20.2.74 NMAC to 40 CFR Parts 51 and 52
14a	Notice of Public Hearing – Albuquerque Journal
14b	Notice of Public Hearing – New Mexico Register
15	Letter to Small Business Regulatory Advisory Committee

NMED Exh. #	Description
16	Proposed Statement of Reasons
17	40 C.F.R. 51.166
18	40 C.F.R. 52.21

7. **Reservation of Rights**

This Notice of Intent to Present Technical Testimony is based on the Division's petition. The Division reserves the right to call any person to testify and to present any exhibit in response to another notice of intent or public comment filed in this matter or to any testimony or exhibit offered at the public hearing. The Division also reserves the right to call any person as a rebuttal witness and to present any exhibit in support thereof.

Respectfully submitted,

NEW MEXICO ENVIRONMENT DEPARTMENT
OFFICE OF GENERAL COUNSEL

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Kerwin C. Singleton

Employment

New Mexico Environment Department Santa Fe, New Mexico — August, 2004 - Present
Manager, Control Strategies - Air Quality Bureau — July, 2008 - Present
Manage a staff of seven environmental analysts for the development of air quality plans and regulations for the State of New Mexico, including the 8-hour Ozone Recommendation, Greenhouse Gas Emissions Inventory Update, Natural Event Action Plans, state-wide Dust Rule, and Rules for Ozone Pre-Cursors.

- Provide guidance and assistance to staff to ensure that plans and regulations are successfully adopted by the Environmental Improvement Board
- Provide technical, fiscal, performance and administrative analysis on draft bills during the legislative session
- Develop and implement credit bank required by the state Clean Cars Rule
- Represent the Department at stakeholder meetings on issues related to air quality plans and rule development

Environmental Scientist & Specialist - Advanced — August 2004 - July 2008
Processed all assigned air quality permit applications (New Source Review and Title V) to final action before or by regulatory deadlines in accordance with approved Department policies and standards, including:

- Administrative and technical review
- Detailed emissions calculations
- Development of appropriate monitoring, record keeping and site specific permit conditions
- Coordination with management and other sections of the Bureau
- File documentation
- Accurate data entry into the permits database

Performed special projects to achieve the enhancement of the Bureau's goals:

- Prepared concise summary and interpretation of the New Source Performance Standards for Stationary Spark Ignition Internal Combustion Engines and National Emissions Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines and presented the summary to permit staff and industry stakeholders
- Prepared revisions to General Construction Permit 5 for Concrete Batch Plants, and coordinated efforts for all General Construction Permit revisions for presentation to the Hearing Officer
- Developed policy language to limit operating scenarios in New Source Review permits
- Created, updated and maintained New Source Review permit templates
- Coordinated with other sections of the Bureau to investigate emissions associated with railcar unloading and propose a regulatory strategy
- Coordinate with other sections of the Bureau and interested parties on a regulatory strategy to address emissions from multiple wellhead sites in the Four Corners region
- Provide technical assistance to permitting staff in the preparation of New Source Review permits.

Concept Technical Group Menomonee Falls, Wisconsin — March, 2003 - July, 2004
Engineer
Provided project-specific environmental support to the Johnson Controls Battery Group manufacturing sites and group headquarters, including:

- Preparation of air quality construction permit applications with detailed emissions calculations and supporting documentation
- Annual emission inventories
- Toxic Release Inventory Form R reports
- Update stormwater management and contingency plans
- Development of standardized environmental procedures

RMT, Inc. Chicago, Illinois — December, 1994 - January 2003
Senior Project Manager/Operations Manager
Guided clients through the complexities of air pollution permitting, reporting and compliance in multiple states to minimize their regulatory burden and obtain permits according to schedule. As the Chicago Operations Manager, managed three staff engineers, identified and developing project

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EXHIBIT 1A

opportunities for engineers to meet or exceed utilization goals, and provided training and workload leveling.

- Interpreted new and revised of National Emission Standards for Hazardous Air Pollutant and provided concise summaries and implementation strategies for clients, including secondary aluminum production, steel foundries, and industrial, commercial and institutional boilers and process heaters.
- Developed operating scenarios that allowed the construction and operation of two new peak-shaving electric generator systems with minimal impact on plant production.
- Developed various operating strategies to maximize material throughput for a new bulk chemical distribution facility to avoid nonattainment New Source Review.
- Prepared major source, synthetic minor source and minor source permit applications and renewals, including detailed emissions calculations for client companies. Prepared annual air emission reports and SARA 313 Form R reports.
- Developed protocols for site-specific air compliance audits.

Johnson Controls Battery Group, Inc. Milwaukee, Wisconsin March, 1992 - December, 1994
Environmental Engineer
Maintained air quality compliance at thirteen lead-acid battery plants and successfully obtained air construction permits to support all new equipment installations and plant modifications.

- Effectively negotiated favorable permit conditions with regulatory agencies.
- Developed comprehensive compliance plan to reduce fugitive and stack lead emissions at the Fullerton, CA plant by ninety percent to comply with South Coast Air Quality Management District's Rule 1420.
- Standardized emission calculation methods and engineering data submittals to minimize the time required to prepare permit applications.
- Developed and distributed monthly newsletter to inform plants and engineering departments of upcoming regulations and compliance deadlines in all environmental media.

Olin Corp. - Brass Group/Winchester Operations East Alton, Illinois June, 1989 - March, 1992
Senior Environmental Engineer
Prepared and submitted all air pollution permit applications and annual emissions reports for the casting plant, brass mill and Winchester ammunition operations.

- Developed and implemented an obsolete chemical identification project with the goal of minimizing future liabilities. Managed the subsequent $250,000 removal and disposal project.
- Investigated and categorized the use of hazardous solvents and presented non-hazardous alternatives that resulted in the elimination of several waste streams and a reduction of waste management costs.
- Performed an economic assessment of solid waste management and off-site disposal costs that resulted in 30% annual cost savings.
- Provided comprehensive environmental permitting and compliance assistance for satellite operations in Missouri and Ohio.
- Provided environmental consulting services for in-plant Total Chemical Management teams.
- Conducted comprehensive environmental audits at off-site TSD facilities to minimize long-term liability.

Missouri Department of Natural Resources St. Louis, MO **July, 1984 - June, 1989**
Environmental Engineer I/II
Conducted inspections of hazardous waste generators and Treatment/Storage/Disposal Facilities in the St. Louis region for compliance with state and federal regulations.

- Assembled documentation to support enforcement action against major violators.
- Performed inspections of sanitary landfills and waste transfer stations for compliance with Missouri Solid Waste regulations.
- Directed and performed preliminary assessments and site inspections on abandoned/uncontrolled hazardous waste sites.
- Represented the Department at industrial association meetings and seminars.

Education

Bachelor of Science, Chemical Engineering

University of Missouri - Columbia

Air Pollution Training Institute and California Air Resources Board Training

Fugitive Dust Control
Fundamental Inspector Course
Compliance Assurance Monitoring
Basic New Source Review/Prevention of Significant Deterioration
New Source Review Reform
Effective Permit Writing
Control of Gaseous Emissions
Control of Particulate Emissions
Sources and Control of Volatile Organic Air Pollutants
Hot Mix Asphalt Plants
Industrial Boilers
Stationary Gas Turbines
Stationary Reciprocating Engines

NED J. JERABEK
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Santa Fe, New Mexico 87507
(505) 471-3498 – Home
(505) 476-4335 – Work

MANAGEMENT and AIR MONITORING/METEOROLOGY EXPERIENCE

New Mexico Environment Department, Air Quality Bureau – Santa Fe, New Mexico
Position: Staff Manager I, Major Source Permits Section, 10/10 to present
Duties: Manage Major Source NSR and TV permitting programs, including the line manager subordinate group. Supervise nine employees. Negotiate federal grant conditions with EPA and ensure the section fulfills those commitments. Review EPA permit policies, guidelines, and court cases, and confer with EPA counterparts to ensure that the permit programs operated by the Bureau conforms to EPA rules and regulations. Prior to permit issuance, make decisions on whether proper regulatory analysis and procedure was followed, whether proper technical and scientific justification was provided in the statement of basis, and whether proposed permit language results in a federally enforceable permit. Conduct public hearings and meetings to provide information to the public and resolve permitting issues.

New Mexico Environment Department, Air Quality Bureau – Santa Fe, New Mexico
Position: Health Program Manager I, Operating Permits Section, 10/97 – 10/10
Duties: Develop and implement new programs, and maintain and improve existing ones to fulfill requirements of federal and state clean air statutes and regulations. Supervise five employees. Provide guidance, oversight and training to employees on program procedures, guidelines, policies, and regulations. Conduct public hearings and meetings to provide information to the public and resolve permitting issues. Ensure that quality permits are issued on time in accordance with new and existing air quality regulations.

New Mexico Environment Department, Air Quality Bureau – Santa Fe, New Mexico
Position: Environmental Specialist, New Source Review Section, 6/92 – 9/97
Duties: Evaluated industrial permit applications for air quality impacts and technical merit. Recommended approval or denial of permits. Review process included technical evaluation of air pollution control equipment, identification of pollutants emitted to the atmosphere, verification of emission rates, and the writing of air quality permits to authorize construction and operation of industrial facilities. As a senior engineer of the new source review section, advised and trained new engineers regarding policies, procedures and review methodology.

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EXHIBIT 1B

Phelps Dodge Corporation – Silver City, New Mexico

Position: Control Room Supervisor & Air Quality Advisor, 2/87 – 2/90

Duties: Managed processing of computer controlled flash furnace copper smelter and assigned personnel to trouble-shooting tasks. Evaluated a continuous environmental feedback system, monitoring ambient sulfur dioxide concentrations, and recommended production configurations to maintain compliance with state and federal environmental regulations.

Phelps Dodge Corporation – Douglas, Arizona

Position: Air Quality Meteorologist, 11/80 – 2/87

Duties: Utilized digital acquisition system, monitoring environmental and meteorological data, to implement curtailment decisions at copper smelter. Aided air quality supervisor in preparing technical reports for the state and federal bureaus for air quality control. Analyzed weather service information to predict periods of poor dispersion, and prepared daily operational weather forecasts.

Cochise College – Douglas, Arizona

Position: Aviation Meteorology Staff Instructor, 4/86 – 2/87

Duties: Taught senior-level aviation meteorology class in commercial pilot program.

National Oceanic & Atmospheric Administration – Pacific Marine Center, Seattle, Washington

Position: Meteorological Science Officer, 7/79 – 9/80

Duties: Served as a commissioned officer aboard the NOAA Ship *Discoverer*. Prepared daily operational weather forecasts relating to deployment of NOAA research equipment. Directed navigation of ship as bridge conning officer. Conducted rare gas sampling experiment in the Alaskan Gulf.

Northern Arizona University – Flagstaff, Arizona

Positions: Supervisor of NAU Weather Lab, 8/78 – 12/78
Teacher's Assistant, 9/76 – 5/78

Duties: Trained first year meteorology students and aided teacher's assistants in weather analysis. Prepared daily 24 hour forecast for weather lab. Supervised and instructed chemistry/physics lab.

EDUCATION

Northern Arizona University - Flagstaff, Arizona
Bachelor of Science degree (1978), in Physical Science with emphasis in Atmospheric Physics and Meteorology.

Washington High School - Two Rivers, Wisconsin, 1966 – 1970

REFERENCES

Richard Goodyear
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New Mexico Environment Dept.
Air Quality Bureau
(505) 476-4305

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Immanuel Lutheran Church
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Santa Fe, NM 87501
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STATE OF NEW MEXICO
BEFORE THE ENVIRONMENTAL IMPROVEMENT BOARD

IN THE MATTER OF PROPOSED AMENDMENTS,
20.2.70 NMAC – *Operating Permits,* and
20.2.74 NMAC - *Permits - Prevention of Significant Deterioration (PSD)* **No. EIB 12-05**

DIRECT TESTIMONY OF KERWIN SINGLETON

The New Mexico Environment Department (Department) proposes to amend 20.2.70 NMAC - *Operating Permits* and 20.2.74 NMAC - *Permits - Prevention of Significant Deterioration (PSD)* to reflect recent changes by the U.S. Environmental Protection Agency (EPA) to these programs. NMED Exhibit A reflects the proposed amendments in current NMAC format. The proposed amendments are shown in legislative format: new material is underlined and deleted material is stricken. A side-by-side comparison of the proposed amendments and the federal language is included as NMED Exhibit B. During my testimony, I will refer to these regulations as Parts 70 and 74 respectively.

I. OVERVIEW

On July 20, 2011, the EPA amended the federal Prevention of Significant Deterioration (PSD) and Title V Greenhouse Gas Tailoring Rule in 40 CFR Part 51 and 70, respectively. The purpose of these amendments was to defer for a period of three (3) years the consideration of CO_2 emissions from biogenic sources when determining whether a stationary source meets the PSD and Title V applicability thresholds, including those for the application of best available control technology (BACT). During the deferral period, EPA is conducting a detailed examination of the scientific and technical

issues related to accounting for biogenic CO_2 emissions and determining, what treatment, if any, these emissions should receive in the PSD and Title V programs.

On June 29, 2012, the EPA finalized "Step 3" of its phase-in approach to permitting sources of greenhouse gas (GHG) emissions in 40 CFR Part 52. Step 3 consists of the decision to maintain the current 100,000/75,000 ton per year CO_2-equivalent (CO_2e) PSD and Title V permit applicability thresholds. 77 Fed. Reg. 41501 (July 12, 2012). This final rule also amends the federal PSD program by establishing plantwide applicability limitations (PALs) for GHG emissions. A PAL sets a site- and pollutant-specific plantwide emission level that allows the source to make changes without triggering PSD requirements, as long as the emissions do not exceed the PAL level.

II. BACKGROUND

To better understand these proposed amendments, I will explain the general requirements of the current Title V and PSD permit programs and how they were modified by the Tailoring Rule.

A. TITLE V REQUIREMENTS

The Title V program requires a source that emits or has the potential to emit 100 tons per year of any pollutant subject to regulation (and certain other sources not relevant here) to obtain an operating permit. A pollutant such as GHG is "subject to regulation" when there is a CAA requirement that requires the actual control of emissions. While Title V does not impose new pollution control requirements (with exceptions not applicable here), it requires that the permit contain all pollution control requirements, also known as "applicable requirements," required by the CAA.

A source must apply for a Title V permit within one year of becoming subject to the Title V program. Title V permits include (1) emissions limitations and standards to assure compliance with applicable requirements; (2) monitoring, recordkeeping and reporting requirements; (3) fee payments; and (4) an annual certification of compliance by a responsible official. Permits can be reopened to incorporate new requirements that become applicable during the permit term or if the source makes changes that conflict with the current permit.

B. PSD REQUIREMENTS

The PSD program is a preconstruction permit program for major stationary sources and major modifications at existing major stationary sources in areas that have been designated "attainment" or "unclassifiable" for a National Ambient Air Quality Standard (NAAQS). For the purpose of PSD, a major stationary source is any new or modified source covered by 28 listed categories that emits or has the potential to emit 100 tons per year or more of any pollutant subject to regulation under the CAA, and any other source that emits or has the potential to emit 250 tons per year or more of any pollutant subject to regulation. PSD defines a "major modification" as (1) a physical change or change in the method of operation of a major stationary source; (2) the change results in an emission increase of a pollutant subject to regulation; and (3) the emission increase exceeds the pollutant-specific significance level. If EPA has not set a significance level for the regulated pollutant, PSD applies to *any* increase in the emission of that pollutant.

PSD's primary requirement is the determination and implementation of best available control technology, or BACT, for each pollutant exceeding the significance level. An affected source must conduct a BACT review using a "top-down" approach,

which calls for the identification of all available control technologies, elimination of technically infeasible options, ranking the remaining options by level of control and cost effectiveness, and finally, BACT selection.

The requirements applicable to State-implemented PSD programs are contained in 40 CFR 51.166. The provisions of the federal PSD program, which apply in the absence of an approved State PSD program, are found at 40 CFR 52.21.

III. TAILORING RULE

The Tailoring Rule defines GHG as the aggregate sum of the following six individual GHGs: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride. To determine PSD and Title V permitting applicability, a source must calculate its GHG emissions as carbon dioxide equivalent (CO_2e) by summing the multiplication product of the mass emissions of each GHG by its global warming potential (GWP). The GWP values have been codified by the EPA in the mandatory GHG reporting rule, 40 CFR Part 98, Subpart A, Table A-1.

EPA modified the definitions of "major stationary source" in the PSD regulation and "major source" in the Title V regulation to "tailor" the application of these programs to GHG emitting sources, and added GHG-specific provisions to the definition of "subject to regulation" to ensure the continued applicability of the statutory mass-based thresholds for PSD and Title V[1]. The tailoring approach consisted of two steps, as described below and graphically in Figure 1. EPA also finalized a GHG significance level for determining whether a project constitutes a major modification under PSD, and

[1] In order to be subject to regulation, a source must emit or have the potential to emit GHGs equal to or greater than 100 tpy for any of the 28 listed sources or 250 tpy for any other stationary source on a mass basis, and emit or have the potential to emit GHGs in an amount equal to or greater than 100,000 tpy CO_2e, If a source is already subject to PSD, a modification would be subject to regulation if the sum of GHGs on a mass basis exceeds 0 tpy, and has a GHG emission increase equal to or greater than 75,000 tpy CO_{2e}.

excluded sources that (1) emitted less than 50,000 tpy of CO_2e; and (2) were not already subject to PSD and Title V.

A. STEP 1 - THRESHOLDS AND TIMING

Step 1 began on January 2, 2011. PSD requirements applied to "anyway" sources, which are those sources that would be subject to PSD because new construction or a major modification caused a significant emission increase of one or more non-GHG pollutant. During Step 1, no source became a major source for PSD based solely on GHG emissions.

"Anyway" sources were required to conduct a BACT analysis for new or increased GHG emissions if two conditions are met:

1. The new or increased GHG emissions calculated as the sum of the six GHGs on a mass basis, with no GWPs applied, exceed 0 tpy; and
2. The new or increased GHG emissions calculated as the sum of the six GHGs on a CO_2e basis, with GWPs applied, equal or exceed 75,000 tpy CO_2e.

Title V requirements also applied to "anyway" sources, which are those sources that would be subject to Title V for one or more non-GHG pollutant. These sources were required to address GHG pollutants when they applied for, renewed, or revised their Title V permits, including GHG-associated monitoring, recordkeeping, and reporting requirements. Like PSD, no source became major for title V based solely on its GHG emissions.

B. STEP 2 - THRESHOLDS AND TIMING

Step 2 began on July 1, 2011. "Anyway" sources for PSD remain subject to PSD. A new source or a modifying source not already subject to PSD for a non-GHG pollutant triggers PSD if two conditions are met:

1. The source emits or has the potential to emit GHG in an amount equal or greater than the following values, calculated as the sum of the six GHGs on a mass basis, with no GWPs applied:
   - 100 tpy for a source in any of the 28 major source categories listed under PSD, or
   - 250 tpy for any other stationary source; and
2. The source emits or has the potential to emit GHG in an amount that equals or exceeds 100,000 tpy CO_2e, with GWPs applied.

A source already subject to PSD which makes a major modification triggers PSD for GHG if two conditions are met:

1. The net GHG emissions increase, calculated as the sum of the six GHGs on a mass basis, with no GWPs applied, equals or exceeds 0 tpy; and
2. The net GHG emissions increase, calculated on a CO_2e basis, with GWPs applied, equals or exceeds 75,000 tpy CO_2e .

"Anyway" sources for Title V remain subject to Title V. Sources not currently subject to Title V must obtain a Title V permit if they meet the following two conditions:

1. An existing or newly constructed source emits or has the potential to emit GHG in an amount that equals or exceeds 100 tpy calculated as the sum of the six GHGs on a mass basis, with no GWPs applied; and

2. An existing or newly constructed source emits or has the potential to emit GHGs in an amount that equals or exceeds 100,000 tpy calculated as the sum of the six GHGs on a CO_2e basis, with GWP applied.

Finally, the EPA committed in the Tailoring Rule that no source with GHG less than 50,000 tpy CO_2e would be subject to PSD or Title V before April 30, 2016.

IV. RECENT REVISIONS TO FEDEAL RULES

A. DEFERRAL FOR CO2 EMISSIONS FROM BIOGENIC SOURCES

The final Tailoring Rule applied a uniform threshold-based approach to determine permit applicability and did not provide various specific exemptions from the rule. EPA published a Call for Information (CFI) on July 15, 2010 that requested information on how to address GHG emissions from bioenergy and other biogenic sources. On August 3, 2010 the National Alliance of Forest Owners (NAFO) petitioned the EPA to reconsider and stay the implementation of the Tailoring Rule, alleging that within the final rule, EPA included CO2 emissions from the combustion of biomass without prior proposal or notice to industry. NAFO claimed that the proposed rule indicated that CO2 emissions from combustion of biomass should not be counted.

After consideration of NAFO's petition and the comments received through the CFI, EPA determined that the accounting for the net atmospheric impact of biogenic CO2 required further consideration. On March 21, 2011 EPA published proposed rulemaking to defer for three years the application of the PSD and Title V requirements to biogenic emissions from stationary sources. In addition, EPA issued interim guidance (Guidance for Determining Best Available Control Technology for Reducing Carbon Dioxide Emissions from Bioenergy Production) to assist permitting authorities establish a basis

that combustion of biomass fuels for energy production could be considered BACT until the deferral became effective.

On July 20, 2011, the EPA amended the federal Prevention of Significant Deterioration (PSD) and Title V Greenhouse Gas Tailoring Rule in 40 CFR Part 51 and 70, respectively, finalizing the deferral, for a period of three (3) years, consideration of CO_2 emissions from biogenic sources when determining whether a stationary source meets the PSD and Title V applicability thresholds, including those for the application of best available control technology (BACT). Biogenic CO2 emissions are defined as CO2 emissions from a stationary source resulting from the combustion or decomposition of biologically-based materials other than fossil fuels and mineral sources of carbon. Examples include, but are not limited to:

1. CO2 generated from the biological decomposition of waste in landfills, wastewater treatment or manure management processes;

2. CO2 from the combustion of biogas collected from biological decomposition of waste in landfills, wastewater treatment or manure management processes;

3. CO2 from fermentation during ethanol production or other industrial fermentation processes; and

4. CO2 from the combustion of biological material, including all types of wood and wood waste, forest residue, and agricultural material.

The deferral does not affect non-GHG pollutant emissions or other GHGs. EPA affirmed that the use of some types of biomass could be part of a strategy to reduce dependence on fossil fuels and believes it is important to ensure that feedstocks with negligible net atmospheric impact not be subject to unnecessary regulation. The three

year deferral will allow EPA time to examine the science and technical issues related to accounting for biogenic CO2 emissions. The deferral will also avoid limiting emissions of CO2 from sources with a trivial amount of emissions or emissions associated with a net CO2 emissions benefit. In addition, the effort required to determine net carbon cycle impact of stationary sources combusting certain types of biomass feedstocks would overwhelm many permitting authorities.

The deferral provisions are contained in the definitions of "subject to regulation" in regulations governing state PSD programs, federal PSD programs, and the Title V permit program, at 40 CFR § 51.166(b)(48)(ii)(a); 40 CFR § 52.21(b)(49)(ii)(a), and 40 CFR § 70.2, respectively. NMED proposes to adopt the deferral into New Mexico's PSD program at 20.2.74.7.AZ(2)(a) NMAC, and into New Mexico's Title V program at 20.2.7.AL NMAC. If the deferral provisions are not adopted, NMED will be required to perform complex calculations without the benefit of a consistent and practical framework for determining net carbon cycle impacts that EPA will develop during the deferral period. It is also possible that NMED would spend valuable time and resources evaluating sources that may have de minimis, neutral or positive impact on net CO2 levels in the atmosphere.

The deferral will not permanently exempt biogenic CO2 from PSD or Title V permitting and sources will need to meet any applicable requirements at a future date depending on the results of EPA's study and subsequent rulemaking. If future EPA rulemaking does not provide a permanent exemption from PSD and Title permitting requirements for a particular source, the deferral would end for that type of source and its biogenic CO2 emissions would need to be considered in future permitting actions.

PSD permits issued during the deferral period will not need to be reopened or amended if the particular source is no longer eligible to exclude biogenic CO2 emissions after the deferral expires. However, if such a source proposed modifications that could potentially require a PSD permit and the source is no longer able to continue excluding its biogenic CO2 emissions after the deferral expires, the source would have to consider its biogenic CO2 emissions in determining whether a PSD permit is required.

Any source that becomes a Title V major source because of biogenic CO2 emissions after the deferral expires will have one year from the date it becomes subject to Title V to apply for a Title V permit.

EPA made adoption of the biogenic CO2 deferral optional for states' Title V and PSD programs under 40 CFR part 70 and 40 CFR 51.166. The deferral was effective immediately upon publication for Title V and PSD permitting programs implemented by EPA under 40 CFR part 71 and 40 CFR 52.21, respectively. Because the Department determined that it was necessary to revise our permitting plans to implement the Tailoring Rule, it is necessary to make additional changes to the our permitting programs consistent with the federal language in order to implement the deferral at the state level.

B. STEP 3 PROVISIONS

For the Step 3 rulemaking, EPA evaluated whether it was possible to lower the 100,000/75,000 TPY threshold to bring smaller sources into the PSD and Title V permitting programs. The lowering of permitting thresholds would only happen if EPA determined that permitting authorities had had enough time to develop infrastructure and increase their GHG permitting expertise and capacity to handle the increased administrative burden, whether sources would be able to meet the requirements of the

PSD program, and only if both EPA and state permitting authorities had developed sufficient streamlining mechanisms for GHG permitting.

EPA determined that neither EPA nor the states had developed sufficient capacity or streamlining techniques to manage the increased number of permits that a reduced permit threshold would generate. Therefore, the final rule maintains the 100,000/75,000 TPY applicability thresholds. Because EPA did not change the applicability thresholds, no changes to New Mexico's corresponding provisions are necessary.

In the same final rule, EPA also revised the regulations governing implementation of PALs for GHGs. A PAL offers an alternative method for determining PSD applicability by setting a site- and pollutant-specific plantwide emission level that allows the source to make changes without triggering PSD requirements, as long as the emissions do not exceed the PAL level. A PAL is established by summing the baseline actual emissions (as defined in 40 CFR 52.21(b)(48)) for each emissions unit at the source and then adding the significance level for the PAL pollutant. Once a PAL level has been determined for a PAL pollutant, the PAL permit includes appropriate monitoring, testing, recordkeeping and reporting requirements to demonstrate compliance with the PAL level.

The amended federal rule provides for the following: (1) it revises the existing PALs permitting program in the PSD rule to allow permitting authorities operating under Part 52 to issue GHG PALs on either a mass basis (tons per year) or CO2e basis; (2) it includes the option to use the CO2e-based increase of 75,000 TPY provided in the "subject to regulation" thresholds in setting the CO2e PAL; (3) it includes the option to issue a GHG PAL to sources that trigger PSD or Title V solely due to GHG emissions;

and (4) it allows GHG PALs to be used as an alternative approach for determining whether a project is a major modification and whether GHG emissions are subject to regulation. If equivalent language is adopted for Part 74, this means that the Department would be able to issue GHG PALs to GHG-only sources without requiring the sources to become a major source under the Tailoring Rule: GHG-only sources could obtain a GHG PAL and remain a minor source as long as their GHG emissions remain below the PAL. Thus, if the Department has the ability to issue a CO2e-based PAL, 75,000 TPY CO2e could be added to a source's CO2e baseline actual emissions to establish the PAL level, because the Tailoring Rule established 75,000 TPY CO2e as the appropriate rate of emissions increase for the GHG subject to regulation applicability threshold for existing sources.

This amendment to the Tailoring Rule provides GHG sources with greater operational flexibility, and makes the application of the PAL rules to GHGs consistent with the rules as applied to other regulated NSR pollutants. It also streamlines future PSD applicability determinations for a source choosing a PAL, as it eliminates the need to evaluate GHG emissions for PSD applicability as long as the source is complying with the GHG PAL. A facility that opts for a GHG PAL must still follow the requirements of Part 72 to the extent applicable.

PALs would generate air quality benefits by encouraging sources to control GHG emissions through efficiency improvements or other emission reduction procedures without triggering major modification permitting procedures or the processes to revise Title V permits to reflect major modifications. A PAL also gives the surrounding community an understanding of the long-term emissions impact from a facility, prevents

emissions creep (i.e., a series of individual unrelated emissions increases that are below PSD applicability thresholds) and by requiring enhanced monitoring, recordkeeping and reporting provisions to demonstrate compliance with the PAL.

Therefore, NMED proposes to revise the PAL-related provisions within 20.2.74.302 NMAC, and the definition of 'subject to regulation" at 20.2.74.7.AZ NMAC, to make New Mexico's PAL provisions for GHG's identical to the federal provisions in 40 CFR § 52.21.[2]

V. OUTREACH

The Department conducted public outreach for the proposed amendments by publishing a public notice in the New Mexico Register and the Albuquerque Journal, and hosted an informational open house.

VI. CONCLUSION

The Department respectfully requests that the EIB adopt the proposed amendments. The Department also requests that if the Board adopts the proposed amendments, then it should authorize the Department to correct typographical errors and make formatting changes requested by the State Records Center.

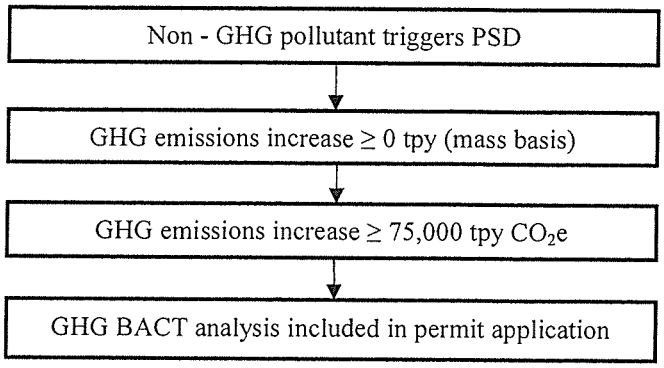
[2] In the preamble to the PAL revisions, EPA explained the relationship of the revisions to 40 CFR Part 52 and state-implemented programs as follows:

" We do not intend these changes to 40 CFR 52.21 to affect existing state authority to issue PAL permits, and nothing in this action would require permitting authorities to take any action with respect to their existing PAL regulations or any existing PAL permits. We also note that these revisions are not minimum program requirements that must be adopted by states into their EPA-approved SIP PSD permitting programs. Accordingly, this final rule does not adopt these changes into the existing PAL provisions contained in 40 CFR 51.166, but nothing in this action is intended to restrict states from adopting these, or similar, changes into their SIP-approved PAL program if they choose to do so" 77 FR at 41.070.

Figure 1: GHG Permit Applicability Decision Chart

Step 1 - January 2, 2011

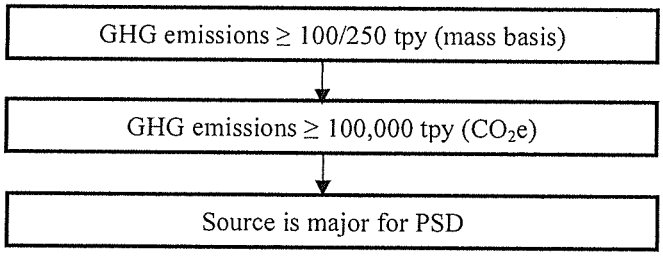
PSD:



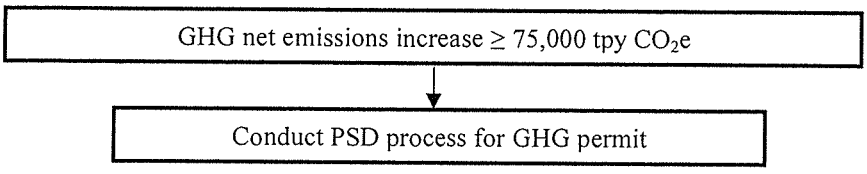
Title V: Identify GHG emissions and include any applicable requirements in the permit.

Step 2 - July 1, 2011

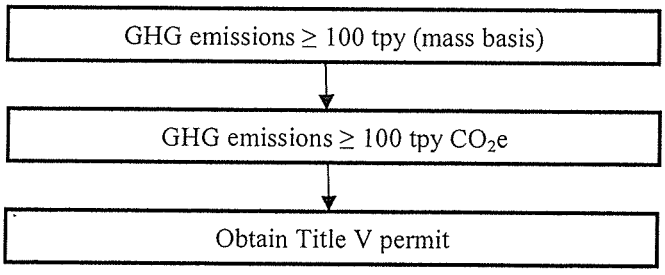
PSD: Minor source for non-GHG pollutants



Major source for any pollutant



Title V:



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NMED-AIR QUALITY BUREAU PROPOSED TAILORING RULE AMENDMENTS

20.2.70 and 20.2.74 NMAC

Deferral for CO_2 Emissions from Biogenic Sources

- NMED is proposing to amend 20.2.70 & 20.2.74 NMAC to add language promulgated by EPA on July 20, 2011.
- EPA amended 40 CFR Parts 51 and 70 to defer for three years the consideration of CO_2 emissions from biogenic sources when determining PSD and Title V applicability, including application of Best Available Control Technology (BACT).

Biogenic Emissions Defined

- Emissions of CO_2 from a stationary source directly resulting from combustion of decomposition of biologically based materials other than fossil fuels and mineral sources of carbon, such as CO_2 generated from:
  - biological decomposition of waste in landfills, wastewater treatment, or manure management practices;
  - combustion of biogas collected from biological decomposition of waste in landfills, wastewater treatment, or manure management practices;
  - fermentation during ethanol production or other industrial fermentation;
  - combustion of the biological fraction of municipal solid waste or bio-solids; and
  - Combustion of biological material, including all types of wood and wood waste, forest residue, and agricultural material.

EPA Action during Deferral Period

- The deferral period will allow EPA time to complete a detailed examination of the scientific and technical issues related to accounting for biogenic CO_2 emissions and how they should be treated in the PSD and Title V programs.
- The deferral does NOT affect non-GHG pollutants or other GHGs.

Permitting

- PSD permits issued during the deferral period will not be reopened or amended if a source is no longer able to exclude CO_2 emissions after the deferral expires.
- These sources will need to consider biogenic CO_2 emissions for PSD applicability for future modifications.
- Sources that become major sources for Title V after the deferral expires will have 1 year to apply for a Title V permit.

Tailoring Rule Phase III

- July 29, 2012: EPA finalized Phase III of its approach to permitting sources of GHGs in 40 CFR Part 52.
- EPA determined that neither EPA nor the states had developed sufficient capacity or streamlining techniques to manage the increased number of permits that a reduced permit threshold would generate.
- Final rule maintains the 100,000/75,000 tpy CO_2-equivalent (CO_2e) PSD and Title V permit applicability thresholds.

GHG Plantwide Applicability Limitations (PALs)

- EPA also provided for the implementation of GHG PALs in the final rule.
- A PAL allows a source to make changes without triggering PSD requirements, as long as the emissions do not exceed the PAL level.
- A PAL permit includes enhanced monitoring, recordkeeping and reporting requirements that demonstrate compliance with the PAL level.

PAL Provisions in Federal Rule

- Revised the PSD PAL provisions to allow authorities operating under 40 CFR Part 52 to issue GHG PALs on either a mass basis or CO_2e basis
- Includes option to use the CO_2e-based increase of 75,000 TPY in the "subject to regulation" thresholds to set the CO_2e PAL
- Includes option to issue a GHG PAL to sources that trigger PSD or Title V solely due to GHG emissions
- Allows GHG PAL to be used as an alternative approach for determining whether a project is a major modification and whether GHG emissions are subject to regulation

NMED Proposed Amendments

- Both the biogenic CO_2 deferral and GHG PAL provisions are optional for states to adopt, but must be adopted in order to provide these options to regulated sources.
- The adoption of equivalent language into state rules will provide facilities additional operational flexibility.
- Adoption of the biogenic CO_2 deferral will avoid permitting of sources that EPA later determines should not be regulated under PSD or Title V.
- A GHG PAL program would encourage sources to control GHG emissions through efficiency improvements or other procedures.

Questions?

Kerwin Singleton: kerwin.singleton@state.nm.us, or 505.476.4350.

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 2 AIR QUALITY (STATEWIDE)
PART 70 OPERATING PERMITS

20.2.70.1 ISSUING AGENCY: Environmental Improvement Board.
[11/30/95; 20.2.70.1 NMAC - Rn, 20 NMAC 20.2.70.100 06/14/02]

20.2.70.2 SCOPE: All persons who own or operate a major source or any other source required to obtain a permit under this Part.
[11/30/95; 20.2.70.2 NMAC - Rn, 20 NMAC 20.2.70.101 06/14/02]

20.2.70.3 STATUTORY AUTHORITY: Environmental Improvement Act, NMSA 1978, section 74-1-8(A)(4) and (7), and Air Quality Control Act, NMSA 1978, sections 74-2-1 et seq., including specifically, section 74-2-5(A), (B), and (C) and (D).
[11/30/95; 20.2.70.3 NMAC - Rn, 20 NMAC 20.2.70.102 06/14/02]

20.2.70.4 DURATION: Permanent.
[11/30/95; 20.2.70.4 NMAC - Rn, 20 NMAC 20.2.70.103 06/14/02]

20.2.70.5 EFFECTIVE DATE: 11/30/95, except where a later date is cited at the end of a section.
[11/30/95; 20.2.70.5 NMAC - Rn, 20 NMAC 20.2.70.I.104, 06/14/02; A, 9/6/06]
[The latest effective date of any section in this part is 01/01/2011.]

20.2.70.6 OBJECTIVE: The objective of this Part is to establish the requirements for obtaining an operating permit.
[11/30/95; 20.2.70.6 NMAC - Rn, 20 NMAC 20.2.70.105 06/14/02]

20.2.70.7 DEFINITIONS: In addition to the terms defined in 20.2.2 NMAC (definitions), as used in this part the following definitions shall apply.

A. **"Acid rain source"** has the meaning given to "affected source" in the regulations promulgated under Title IV of the federal act, and includes all sources subject to Title IV of the federal act.

B. **"Affected programs"** means all states, local air pollution control programs, and Indian tribes and pueblos, that are within 50 miles of the source.

C. **"Air pollutant"** means an air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the ambient air. Such term includes any precursors to the formation of any air pollutant, to the extent the administrator has identified such precursor or precursors for the particular purpose for which the term "air pollutant" is used. This excludes water vapor, nitrogen (N2), oxygen (O2), and ethane.

D. **"Air pollution control equipment"** means any device, equipment, process or combination thereof, the operation of which would limit, capture, reduce, confine, or otherwise control regulated air pollutants or convert for the purposes of control any regulated air pollutant to another form, another chemical or another physical state. This includes, but is not limited to, sulfur recovery units, acid plants, baghouses, precipitators, scrubbers, cyclones, water sprays, enclosures, catalytic converters, and steam or water injection.

E. **"Applicable requirement"** means all of the following, as they apply to a Part 70 source or to an emissions unit at a Part 70 source (including requirements that have been promulgated or approved by the board or US EPA through rulemaking at the time of permit issuance but have future-effective compliance dates).

(1) Any standard or other requirement provided for in the New Mexico state implementation plan approved by US EPA, or promulgated by US EPA through rulemaking, under Title I of the federal act to implement the relevant requirements of the federal act, including any revisions to that plan promulgated in 40 CFR, Part 52.

(2) Any term or condition of any preconstruction permit issued pursuant to regulations approved or promulgated through rulemaking under Title I, including Parts C or D, of the federal act, unless that term or condition is determined by the department to be no longer pertinent.

(3) Any standard or other requirement under Section 111 of the federal act, including Section 111(d).

(4) Any standard or other requirement under Section 112 of the federal act, including any requirement concerning accident prevention under Section 112(r)(7) of the federal act.

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(5) Any standard or other requirement of the acid rain program under Title IV of the federal act or the regulations promulgated thereunder.

(6) Any requirements established pursuant to Section 504(b) or Section 114(a)(3) of the federal act.

(7) Any standard or other requirement governing solid waste incineration under Section 129 of the federal act.

(8) Any standard or other requirement for consumer and commercial products under Section 183(e) of the federal act.

(9) Any standard or other requirement for tank vessels under Section 183(f) of the federal act.

(10) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the federal act, unless the administrator has determined that such requirements need not be contained in a Title V permit.

(11) Any national ambient air quality standard.

(12) Any increment or visibility requirement under Part C of Title I of the federal act, but only as it would apply to temporary sources permitted pursuant to Section 504(e) of the federal act.

(13) Any regulation adopted by the board pursuant to the New Mexico Air Quality Control Act, Section 74-2-5(B) NMSA 1978.

F. **"CFR"** means the Code of Federal Regulations.

G. **"Draft permit"** means a version of a permit which the department offers for public participation or affected program review.

H. **"Emission limitation"** means a requirement established by US EPA, the board, or the department, that limits the quantity, rate or concentration, or combination thereof, of emissions of regulated air pollutants on a continuous basis, including any requirements relating to the operation or maintenance of a source to assure continuous reduction.

I. **"Emissions allowable under the permit"** means:

(1) any state or federally enforceable permit term or condition that establishes an emission limit (including a work practice standard) requested by the applicant and approved by the department or determined at issuance or renewal to be required by an applicable requirement; or

(2) any federally enforceable emissions cap that the permittee has assumed to avoid an applicable requirement to which the source would otherwise be subject.

J. **"Emissions unit"** means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any air pollutant listed pursuant to Section 112(b) of the federal act. This term is not meant to alter or affect the definition of the term "unit" for purposes of Title IV of the federal act.

K. **Federally enforceable"** means all limitations and conditions which are enforceable by the administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within the New Mexico state implementation plan, and any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I, including 40 CFR 51.165 and 40 CFR 51.166.

L. **"Final permit"** means the version of an operating permit issued by the department that has met all review requirements of 20.2.70.400 NMAC - 20.2.70.499 NMAC.

M. **"Fugitive emissions"** are those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.

N. **"General permit"** means an operating permit that meets the requirements of 20.2.70.303 NMAC.

O. **"Greenhouse gas"** for the purpose of this part is defined as the aggregate group of the following six gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

P. **"Hazardous air pollutant"** means an air contaminant that has been classified as a hazardous air pollutant pursuant to the federal act.

Q. **"Insignificant activities"** means those activities which have been listed by the department and approved by the administrator as insignificant on the basis of size, emissions or production rate.

R. **"Major source"** means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties, and are under common control of the same person(s)) in which all of the pollutant emitting activities at such source belong to the same major group (i.e., all have the same two-digit code), as described in the standard industrial classification manual, 1987, and that is described in Paragraphs (1), (2) or (3) below.

(1) A major source under Section 112 of the federal act, which is defined as the following.

(a) For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tons or more per year of any hazardous air pollutant which has been listed pursuant to Section 112 (b) of the

federal act, 25 or more tons per year of any combination of such hazardous air pollutants (including any major source of fugitive emissions of any such pollutant, as determined by rule by the administrator), or such lesser quantity as the administrator may establish by rule. Notwithstanding the preceding sentence, hazardous emissions from any oil or gas exploration or production well (with its associated equipment) and hazardous emissions from any pipeline compressor or pump station shall not be aggregated with hazardous emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources.

(b) For radionuclides, "major source" shall have the meaning specified by the administrator by rule.

(2) A major stationary source of air pollutants that directly emits or has the potential to emit, 100 or more tons per year of any air pollutant subject to regulation (including any major source of fugitive emissions of any such pollutant, as determined by rule by the administrator). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of this paragraph, unless the source belongs to one of the following categories of stationary sources:

(a) coal cleaning plants (with thermal dryers);
(b) kraft pulp mills;
(c) portland cement plants;
(d) primary zinc smelters;
(e) iron and steel mills;
(f) primary aluminum ore reduction plants;
(g) primary copper smelters;
(h) municipal incinerators capable of charging more than 250 tons of refuse per day;
(i) hydrofluoric, sulfuric, or nitric acid plants;
(j) petroleum refineries;
(k) lime plants;
(l) phosphate rock processing plants;
(m) coke oven batteries;
(n) sulfur recovery plants;
(o) carbon black plants (furnace process);
(p) primary lead smelters;
(q) fuel conversion plant;
(r) sintering plants;
(s) secondary metal production plants;
(t) chemical process plants;
(u) fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
(v) petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
(w) taconite ore processing plants;
(x) glass fiber processing plants;
(y) charcoal production plants;
(z) fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;
(aa) any other stationary source category, which as of August 7, 1980 is being regulated under Section 111 or 112 of the federal act.

(3) A major stationary source as defined in Part D of Title I of the federal act, including:

(a) for ozone non-attainment areas, sources with the potential to emit 100 tons or more per year of volatile organic compounds or nitrogen oxides in areas classified as "marginal" or "moderate," 50 tons or more per year in areas classified as "serious," 25 tons or more per year in areas classified as "severe," and 10 tons or more per year in areas classified as "extreme"; except that the references in this paragraph to 100, 50, 25, and 10 tons per year of nitrogen oxides shall not apply with respect to any source for which the administrator has made a finding, under Section 182(f)(1) or (2) of the federal act, that requirements under Section 182(f) of the federal act do not apply;

(b) for ozone transport regions established pursuant to Section 184 of the federal act, sources with the potential to emit 50 tons or more per year of volatile organic compounds;

(c) for carbon monoxide non-attainment areas (1) that are classified as "serious," and (2) in which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the administrator, sources with the potential to emit 50 tons or more per year of carbon monoxide; and

(d) for particulate matter (PM10) non-attainment areas classified as "serious," sources with the potential to emit 70 tons or more per year of PM10.

S. **"Operating permit"** or **"permit"** (unless the context suggests otherwise) means any permit or group of permits covering a source that is issued, renewed, modified or revised pursuant to this part.

T. **"Operator"** means the person or persons responsible for the overall operation of a facility.

U. **"Owner"** means the person or persons who own a facility or part of a facility.

V. **"Part"** means an air quality control regulation under Title 20, Chapter 2 of the New Mexico Administrative Code, unless otherwise noted; as adopted or amended by the board.

W. **"Part 70 source"** means any source subject to the permitting requirements of this part, as provided in 20.2.70.200 NMAC - 20.2.70.299 NMAC.

X. **"Permit modification"** means a revision to an operating permit that meets the requirements of significant permit modifications, minor permit modifications, or administrative permit amendments, as defined in 20.2.70.404 NMAC.

Y. **"Permittee"** means the owner, operator or responsible official at a permitted Part 70 source, as identified in any permit application or modification.

Z. **"Portable source"** means any plant that is mounted on any chassis or skids and which can be moved by the application of a lifting or pulling force. In addition, there shall be no cable, chain, turnbuckle, bolt or other means (except electrical connections) by which any piece of equipment is attached or clamped to any anchor, slab, or structure, including bedrock, that must be removed prior to the application of a lifting or pulling force for the purpose of transporting the unit. Portable sources may include sand and gravel plants, rock crushers, asphalt plants and concrete batch plants which meet this criteria.

AA. **"Potential to emit"** means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is federally enforceable. The potential to emit for nitrogen dioxide shall be based on total oxides of nitrogen.

AB. **"Proposed permit"** means the version of a permit that the department proposes to issue and forwards to the administrator for review in compliance with 20.2.70.402 NMAC.

AC. **"Regulated air pollutant"** means the following:

(1) nitrogen oxides, total suspended particulate matter, or any volatile organic compounds;

(2) any pollutant for which a national ambient air quality standard has been promulgated;

(3) any pollutant that is subject to any standard promulgated under Section 111 of the federal act;

(4) any class I or II substance subject to any standard promulgated under or established by Title VI of the federal act;

(5) any pollutant subject to a standard promulgated under Section 112 or any other requirements established under Section 112 of the federal act, including Sections 112(g), (j), and (r), including the following;

(a) any pollutant subject to requirements under Section 112(j) of the federal act; if the administrator fails to promulgate a standard by the date established pursuant to Section 112(e) of the federal act, any pollutant for which a subject source would be a major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to Section 112(e) of the federal act; and

(b) any pollutant for which the requirements of Section 112(g)(2) of the federal act have been met, but only with respect to the individual source subject to a Section 112(g)(2) requirement; or

(6) any other pollutant subject to regulation as defined in Subsection AL of this section.

AD. **"Renewal"** means the process by which a permit is reissued at the end of its term.

AE. **"Responsible official"** means one of the following.

(1) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either a) the facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars), or b) the delegation of authority to such representative is approved in advance by the department.

(2) For a partnership or sole proprietorship: a general partner or the proprietor, respectively.

(3) For a municipality, state, federal or other public agency: either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a regional administrator of US EPA).

(4) For an acid rain source: the designated representative (as defined in Section 402(26) of the federal act) in so far as actions, standards, requirements, or prohibitions under Title IV of the federal act or the regulations promulgated thereunder are concerned, and for any other purposes under 40 CFR, Part 70.

AF. **"Section 502(b)(10) changes"** are changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

AG. **"Shutdown"** means the cessation of operation of any air pollution control equipment, process equipment or process for any purpose.

AH. **"Solid waste incineration unit"** means a distinct operating unit of any facility which combusts any solid waste material from commercial or industrial establishments or the general public (including single and multiple residences, hotels, and motels). The term "solid waste incineration unit" does not include:

(1) incinerators or other units required to have a permit under Section 3005 of the federal Solid Waste Disposal Act;

(2) materials recovery facilities (including primary or secondary smelters) which combust waste for the primary purpose of recovering metals;

(3) qualifying small power production facilities, as defined in Section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)), or qualifying cogeneration facilities, as defined in Section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)), which burn homogeneous waste (such as units which burn tires or used oil, but not including refuse-derived fuel) for the production of electric energy or in the case of qualifying cogeneration facilities which burn homogeneous waste for the production of electric energy and steam or forms of useful energy (such as heat) which are used for industrial, commercial, heating or cooling purposes; or

(4) air curtain incinerators, provided that such incinerators only burn wood wastes, yard wastes and clean lumber and that such air curtain incinerators comply with opacity limitations established by the administrator by rule.

AI. **"Startup"** means the setting into operation of any air pollution control equipment, process equipment or process for any purpose.

AJ. **"Stationary source"** or **"source"** means any building, structure, facility, or installation, or any combination thereof that emits or may emit any regulated air pollutant or any pollutant listed under Section 112(b) of the federal act.

AK. **"Subsidiary"** means a business concern which is owned or controlled by, or is a partner of, the applicant or permittee.

AL. **"Subject to regulation"** means, for any air pollutant, that the pollutant is subject to either a provision in the act, or a nationally-applicable regulation codified by the administrator in subchapter C of 40 CFR Chapter I, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:

(1) "greenhouse gases" (GHGs) shall not be subject to regulation, unless, as of July 1, 2011, the GHG emissions are at a stationary source emitting or having the potential to emit 100,000 tons per year CO2 equivalent emissions;

(2) the term "tons per year CO2 equivalent emissions" (CO2e) shall represent the aggregate amount of GHGs emitted by the regulated activity, and shall be computed by multiplying the mass amount of emissions (tons per year), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at Table A-1 to subpart A of 40 CFR part 98 - Global Warming Potentials, and summing the resultant value for each gas; ~~.~~ For purposes of this paragraph, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of non-fossilized and biodegradable organic material originating from plants, animals, or micro-organisms (including products, by-products, residues and waste from agriculture, forestry and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material);

(3) if a federal court stays, invalidates or otherwise renders unenforceable by the US EPA, in whole or in part, the prevention of significant deterioration and Title V greenhouse gas tailoring rule (75 FR 31514, June 3,

2010), the definition "subject to regulation" shall be enforceable by the department only to the extent that it is enforceable by US EPA.

AM. **"Temporary source"** means any plant that is situated in one location for a period of less than one year, after which it will be dismantled and removed from its current site or relocated to a new site. A temporary source may be semi-permanent, which means that is does not have to meet the requirements of a portable source. Temporary sources may include well head compressors which meet this criteria.

AN. **"Title I modification"** means any modification under Sections 111 or 112 of the federal act and any physical change or change in method of operations that is subject to the preconstruction regulations promulgated under Parts C and D of the federal act.

[11/30/95; 20.2.70.7 NMAC - Rn, 20 NMAC 2.70.I.107, 06/14/02; A, 11/07/02; A, 9/6/06; A, 01/01/11; **A, XX/XX/XX**]

20.2.70.8 **AMENDMENT AND SUPERSESSION OF PRIOR REGULATIONS:** This Part amends and supersedes Air Quality Control Regulation ("AQCR") 770, - Operating Permits, filed November 15, 1993, as amended ("AQCR 770"). The original effective date of AQCR 770 was December 19, 1994, which was the effective date of approval, by the Administrator, of the New Mexico operating permit program. (See 59 FR 59656, November 18, 1994).

A. All references to AQCR 770 in any other rule shall be construed as a reference to this Part.

B. The amendment and supersession of AQCR 770 shall not affect any administrative or judicial enforcement action pending on the effective date of such amendment nor the validity of any permit issued pursuant to AQCR 770.

[11/30/95; 20.2.70.8 NMAC - Rn, 20 NMAC 2.70.106 06/14/02]

20.2.70.9 **DOCUMENTS:** Documents cited in this Part may be viewed at the New Mexico Environment Department, Air Quality Bureau, Runnels Building, 1190 Saint Francis Drive, Santa Fe, NM 87505 [1301 Siler Rd., Bldg. B, Santa Fe, NM 87507].

[11/30/95; 20.2.70.9 NMAC - Rn, 20 NMAC 2.70.108 06/14/02; A, 01/01/11]

20.2.70.10 to 20.2.70.199 [RESERVED]

20.2.70.200 **PART 70 SOURCES:** Operating permits must be obtained from the Department for the following sources:

A. Any major source;

B. Any source, including an area source, subject to a standard or other requirement promulgated under section 111 -- Standards of Performance for New Stationary Sources, or section 112 -- Hazardous Air Pollutants, of the Federal Act, but not including any source which:

(1) is exempted under Subsection B of 20.2.70.202 NMAC; or

(2) would be required to obtain a permit solely because it is subject to regulations or requirements under section 112(r) of the Federal Act;

C. Any acid rain source; and

D. Any source in a source category so designated by the Administrator, in whole or in part, by regulation, after notice and comment.

[11/30/95; 20.2.70.200 NMAC - Rn, 20 NMAC 2.70.200 06/14/02]

20.2.70.201 **REQUIREMENT FOR A PERMIT:**

A. A Part 70 source may operate after the time that it is required to submit a timely and complete application under this part only if:

(1) the source is in compliance with an operating permit issued by the department or EPA; or

(2) a timely permit (including permit renewal) application has been submitted consistent with 20.2.70.300 NMAC; the ability to operate under these circumstances shall cease if the applicant fails to submit by the deadline specified in writing by the department any additional information identified as being needed to process the application.

B. Revocation or termination of a permit by the department terminates the permittee's right to operate.

C. The submittal of a complete operating permit application shall not protect any source from any applicable requirement, including any requirement that the source have a preconstruction permit under Title I of the federal act or state regulations.

D, Requirement for permit under 20.2.72 NMAC.

(1) Part 70 sources that have an operating permit and do not have a permit issued under 20.2.72 NMAC or 20.2.74 NMAC shall submit a complete application for a permit under 20.2.72 NMAC within 180 days of September 6, 2006. The department shall consider and may grant reasonable requests for extension of this deadline on a case-by-case basis.

(2) Part 70 sources that do not have an operating permit or a permit under 20.2.72 NMAC upon the effective date of this subsection shall submit an application for a permit under 20.2.72 NMAC within 60 days after submittal of an application for an operating permit.

(3) Paragraphs 1 and 2 of this subsection shall not apply to sources that have demonstrated compliance with both the national and state ambient air quality standards through dispersion modeling or other method approved by the department and that have requested incorporation of conditions in their operating permit to ensure compliance with these standards.

[11/30/95; 20.2.70.201 NMAC - Rn, 20 NMAC 2.70.II.201, 06/14/02; A, 9/6/06]

20.2.70.202 SOURCE CATEGORY EXEMPTIONS:

A. The following source categories are exempted from the obligation to obtain an operating permit:

(1) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR Part 60, Subpart AAA -- Standards of Performance for New Residential Wood Heaters;

(2) All sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR Part 61, Subpart M -- National Emission Standard for Hazardous Air Pollutants for Asbestos, section 61.145, Standard for Demolition and Renovation;

(3) Except as required under sections 20.2.70.500 NMAC - 20.2.70.599 NMAC, any source that would be required to obtain a permit solely because of emissions of radionuclides; and

(4) Any source in a source category exempted by the Administrator, by regulation, after notice and comment.

B. Non-major sources, including those subject to sections 111 or 112 of the Federal Act, are exempt from the obligation to obtain a Part 70 (20.2.70 NMAC) permit until such time that the Administrator completes a rulemaking that requires such sources to obtain operating permits.

C. Any source exempted from the requirement to obtain an operating permit may opt to apply for a permit under this Part.

D. No permit for a solid waste incineration unit shall be issued by the Department if a New Mexico state agency is responsible, in whole or in part, for the design and construction or operation of the unit. In such cases, applications shall be made to the Administrator. Department review or approval of solid waste incineration units shall not constitute responsibility for the design, construction, or operation of the unit.

[11/30/95; 20.2.70.202 NMAC - Rn, 20 NMAC 2.70.202 06/14/02]

20.2.70.203 EXISTING MAJOR SOURCES WHICH ARE NOT REQUIRED TO HAVE A PERMIT UNDER 20.2.72 NMAC (CONSTRUCTION PERMITS):

A. The owner or operator of any major source may reverse or avoid designation as a major source under this Part by obtaining a permit under 20.2.72 NMAC (Construction Permits) which includes federally enforceable conditions which restrict the potential to emit of the source to non-major emission rates. Such conditions may include emissions limitations, process restrictions and/or limitations, restrictions on annual hours of operation, or other conditions which reduce the facility's potential to emit.

B. [REPEALED]

[11/30/95; A, 11/19/97; 20.2.70.203 NMAC - Rn, 20 NMAC 2.70.203 06/14/02]

20.2.70.204 BERNALILLO COUNTY: For the operation of sources within Bernalillo County, the applicant shall make such applications to the Air Pollution Control Division of the Albuquerque Environmental Health Department or its successor agency or authority.

[11/30/95; 20.2.70.204 NMAC - Rn, 20 NMAC 2.70.204 06/14/02]

20.2.70.205 INDIAN TRIBAL JURISDICTION: The requirements of this Part do not apply to sources within Indian Tribal jurisdiction. For the operation of sources in that jurisdiction, the applicant should make such applications to the Tribal Authority or to the Administrator, as appropriate.
[11/30/95; 20.2.70.205 NMAC - Rn, 20 NMAC 2.70.205 06/14/02]

20.2.70.206 to 20.2.70.299 [RESERVED]

20.2.70.300 PERMIT APPLICATIONS:

A. Duty to apply. For each Part 70 source, the owner or operator shall submit a timely and complete permit application in accordance with this part.

B. Timely application. A timely application for a source applying for a permit under this part is:

(1) for first time applications, one that is submitted within twelve (12) months after the source commences operation as a Part 70 source;

(2) for purposes of permit renewal, one that is submitted at least twelve (12) months prior to the date of permit expiration;

(3) for the acid rain portion of permit applications for initial phase II acid rain sources under Title IV of the federal act, by January 1, 1996 for sulfur dioxide, and by January 1, 1998 for nitrogen oxides;

C. Completeness of application.

(1) To be deemed complete, an application must provide all information required pursuant to Subsection D of 20.2.70.300 NMAC, except that applications for permit modifications need supply such information only if it is related to the proposed change.

(2) If, while processing an application, regardless of whether it has been determined or deemed to be complete, the department determines that additional information is necessary to evaluate or take final action on that application, it may request such information in writing and set a reasonable deadline for a response.

(3) Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application or in a supplemental submittal shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide further information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.

(4) The applicant's ability to operate without a permit, as set forth in Paragraph (2) of Subsection A of 20.2.70.201 NMAC, shall be in effect from the date a timely application is submitted until the final permit is issued or disapproved, provided that the applicant adequately submits any requested additional information by the deadline specified by the department.

D. Content of application. Any person seeking a permit under this part shall do so by filing a written application with the department. The applicant shall submit three (3) copies of the permit application, or more, as requested by the department. An applicant may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under 20.2.71 NMAC (operating permit emission fees). Fugitive emissions shall be included in the permit application in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source. All applications shall meet the following requirements.

(1) Be made on forms furnished by the department, which for the acid rain portions of permit applications and compliance plans shall be on nationally-standardized forms to the extent required by regulations promulgated under Title IV of the federal act.

(2) State the company's name and address (and, if different, plant name and address), together with the names and addresses of the owner(s), responsible official and the operator of the source, any subsidiaries or parent companies, the company's state of incorporation or principal registration to do business and corporate or partnership relationship to other permittees subject to this part, and the telephone numbers and names of the owners' agent(s) and the site contact(s) familiar with plant operations.

(3) State the date of the application.

(4) Include a description of the source's processes and products (by standard industrial classification code) including any associated with alternative scenarios identified by the applicant, and a map, such as the 7.5 minute topographic quadrangle map published by the United States geological survey or the most detailed map available showing the exact location of the source. The location shall be identified by latitude and longitude or by UTM coordinates.

(5) For all emissions of all air pollutants for which the source is major and all emissions of regulated air pollutants, provide all emissions information, calculations and computations for the source and for each emissions unit, except for insignificant activities (as defined in 20.2.70.7 NMAC). This shall include:

(a) a process flow sheet of all components of the facility which would be involved in routine operations and emissions;

(b) identification and description of all emissions points in sufficient detail to establish the basis for fees and applicability of requirements of the state and federal acts;

(c) emissions rates in tons per year, pounds per hour and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method;

(d) specific information such as that regarding fuels, fuel use, raw materials, or production rates, to the extent it is needed to determine or regulate emissions;

(e) identification and full description, including all calculations and the basis for all control efficiencies presented, of air pollution control equipment and compliance monitoring devices or activities;

(f) the maximum and standard operating schedules of the source, as well as any work practice standards or limitations on source operation which affect emissions of regulated pollutants;

(g) if requested by the department, an operational plan defining the measures to be taken to mitigate source emissions during startups, shutdowns and emergencies;

(h) other relevant information as the department may reasonably require or which are required by any applicable requirements (including information related to stack height limitations developed pursuant to Section 123 of the federal act); and

(i) for each alternative operating scenario identified by the applicant, all of the information required in Subparagraphs (a) through (h) above, as well as additional information determined to be necessary by the department to define such alternative operating scenarios.

(6) Provide a list of insignificant activities (as defined in 20.2.70.7 NMAC) at the source, their emissions, to the extent required by the department, and any information necessary to determine applicable requirements.

(7) Provide a citation and description of all applicable air pollution control requirements, including:

(a) sufficient information related to the emissions of regulated air pollutants to verify the requirements that are applicable to the source; and

(b) a description of or reference to any applicable test method for determining compliance with each applicable requirement.

(8) Provide an explanation of any proposed exemptions from otherwise applicable requirements.

(9) Provide other specific information that may be necessary to implement and enforce other requirements of the state or federal acts or to determine the applicability of such requirements, including information necessary to collect any permit fees owed under 20.2.71 NMAC (operating permit emission fees).

(10) Provide certification of compliance, including all of the following.

(a) A certification, by a responsible official consistent with Subsection E of 20.2.70.300 NMAC, of the source's compliance status for each applicable requirement. For national ambient air quality standards, certifications shall be based on the following.

(i) For first time applications, this certification shall be based on modeling submitted with the application for a permit under 20.2.72 NMAC.

(ii) For permit renewal applications, this certification shall be based on compliance with the relevant terms and conditions of the current operating permit.

(b) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods.

(c) A statement that the source will continue to be in compliance with applicable requirements for which it is in compliance, and will, in a timely manner or at such schedule expressly required by the applicable requirement, meet additional applicable requirements that become effective during the permit term.

(d) A schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the department.

(e) A statement indicating the source's compliance status with any enhanced monitoring and compliance certification requirements of the federal act.

(11) For sources that are not in compliance with all applicable requirements at the time of permit application, provide a compliance plan that contains all of the following.

(a) A description of the compliance status of the source with respect to all applicable requirements.

(b) A narrative description of how the source will achieve compliance with such requirements for which it is not in compliance.

(c) A schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with such applicable requirements. The schedule of compliance shall be at least as stringent as that contained in any consent decree or administrative order to which the source is subject, and the obligations of any consent decree or administrative order shall not be in any way diminished by the schedule of compliance. Any such schedule of compliance shall be supplemental to, and shall not prohibit the department from taking any enforcement action for noncompliance with, the applicable requirements on which it is based.

(d) A schedule for submission of certified progress reports no less frequently than every six (6) months.

(e) For the portion of each acid rain source subject to the acid rain provisions of Title IV of the federal act, the compliance plan content requirements specified in this paragraph, except as specifically superseded by regulations promulgated under Title IV of the federal act with regard to the schedule and method(s) the source will use to achieve compliance with the acid rain emissions limitations.

E. Certification. Any document, including any application form, report, or compliance certification, submitted pursuant to this part shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this part shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

[11/30/95; A, 11/14/98; 20.2.70.300 NMAC - Rn, 20 NMAC 2.70.III.300, 06/14/02; A, 9/6/06; A, 01/01/11]

20.2.70.301 CONFIDENTIAL INFORMATION PROTECTION:

A. All confidentiality claims made regarding material submitted to the Department under this Part shall be reviewed under the provisions of the New Mexico Air Quality Control Act section 74-2-11 NMSA 1978 and the New Mexico Inspection of Public Records Act, sections 14-2-1 et seq. NMSA 1978.

B. In the case where an applicant or permittee has submitted information to the Department under a claim of confidentiality, the Department may also require the applicant or permittee to submit a copy of such information directly to the Administrator.

C. An operating permit is a public record, and not entitled to protection under section 114(c) of the Federal Act.

[11/30/95; 20.2.70.301 NMAC - Rn, 20 NMAC 2.70.301 06/14/02]

20.2.70.302 PERMIT CONTENT:

A. Permit conditions.

(1) The department shall specify conditions upon a permit, including emission limitations and sufficient operational requirements and limitations, to assure compliance with all applicable requirements at the time of permit issuance or as specified in the approved schedule of compliance. The permit shall:

(a) for major sources, include all applicable requirements for all relevant emissions units in the major source;

(b) for any non-major source subject to 20.2.70.200 NMAC - 20.2.70.299 NMAC, include all applicable requirements which apply to emissions units that cause the source to be subject to this part;

(c) specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based;

(d) include a severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit;

(e) include a provision to ensure that the permittee pays fees to the department consistent with the fee schedule in 20.2.71 NMAC (Operating Permit Emission Fees); and

(f) for purposes of the permit shield, identify any requirement specifically identified in the permit application or significant permit modification that the department has determined is not applicable to the source, and state the basis for any such determination.

(2) Each permit issued shall, additionally, include provisions stating the following.

(a) The permittee shall comply with all terms and conditions of the permit. Any permit noncompliance is grounds for enforcement action. In addition, noncompliance with federally enforceable permit conditions constitutes a violation of the federal act.

(b) It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

(c) The permit may be modified, reopened and revised, revoked and reissued, or terminated for cause in accordance with 20.2.70.405 NMAC.

(d) The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance shall not stay any permit condition.

(e) The permit does not convey any property rights of any sort, or any exclusive privilege.

(f) Within the period specified by the department, the permittee shall furnish any information that the department may request in writing to determine whether cause exists for reopening and revising, revoking and reissuing, or termination of the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the department copies of records required by the permit to be maintained.

(3) The terms and conditions for all alternative operating scenarios identified in the application and approved by the department:

(a) shall require that the permittee maintain a log at the permitted facility which documents, contemporaneously with any change from one operating scenario to another, the scenario under which the facility is operating; and

(b) shall, for each such alternative scenario, meet all applicable requirements and the requirements of this part.

(4) The department may impose conditions regulating emissions during startup and shutdown.

(5) All permit terms and conditions which are required under the federal act or under any of its applicable requirements, including any provisions designed to limit a source's potential to emit, are enforceable by the administrator and citizens under the federal act. The permit shall specifically designate as not being federally enforceable under the federal act any terms or conditions included in the permit that are not required under the federal act or under any of its applicable requirements.

(6) The issuance of a permit, or the filing or approval of a compliance plan, does not relieve any person from civil or criminal liability for failure to comply with the provisions of the Air Quality Control Act, the federal act, federal regulations thereunder, any applicable regulations of the board, and any other applicable law or regulation.

(7) The department may include part or all of the contents of the application as terms and conditions of the permit or permit modification. The department shall not apply permit terms and conditions upon emissions of regulated pollutants for which there are no applicable requirements, unless the source is major for that pollutant.

(8) Fugitive emissions from a source shall be included in the operating permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

(9) The acid rain portion of operating permits for acid rain sources shall additionally:

(a) state that, where an applicable requirement of the federal act is more stringent than an applicable requirement of regulations promulgated under Title IV of the federal act, both provisions shall be incorporated into the permit and shall be enforceable by the administrator; and

(b) contain a permit condition prohibiting emissions exceeding any allowances that the acid rain source lawfully holds under Title IV of the federal act or the regulations promulgated thereunder; no permit modification under this part shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit modification under any other applicable requirement; no limit shall be placed on the number of allowances held by the acid rain source; the permittee may not use allowances as a defense to noncompliance with any other applicable requirement; any such allowance shall be accounted for according to the procedures established in regulations promulgated under Title IV of the federal act.

B. Permit duration. The department shall issue operating permits for a fixed term of five (5) years.

C. Monitoring.

(1) Each permit shall contain all emissions monitoring requirements, and analysis procedures or test methods, required to assure and verify compliance with the terms and conditions of the permit and applicable requirements, including any procedures and methods promulgated by the administrator.

(2) Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), the permit shall require periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to Subsection E of 20.2.70.302 NMAC. Such

monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement.

(3) The permit shall also contain specific requirements concerning the use, maintenance, and, when appropriate, installation of monitoring equipment or methods.

D. Recordkeeping.

(1) The permit shall require recordkeeping sufficient to assure and verify compliance with the terms and conditions of the permit, including recordkeeping of:

(a) the date, place as defined in the permit, and time of sampling or measurements;

(b) the date(s) analyses were performed;

(c) the company or entity that performed the analyses;

(d) the analytical techniques or methods used;

(e) the results of such analyses; and

(f) the operating conditions existing at the time of sampling or measurement.

(2) Records of all monitoring data and support information shall be retained for a period of at least five (5) years from the date of the monitoring sample, measurement, report, or application. Supporting information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

E. Reporting. The permit shall require reporting sufficient to assure and verify compliance with the terms and conditions of the permit and all applicable requirements, including all of the following.

(1) Submittal of reports of any required monitoring at least every six (6) months. The reports shall be due to the department within forty-five (45) days of the end of the permittee's reporting period. All instances of deviations from permit requirements, including emergencies, must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with Subsection E of 20.2.70.300 NMAC.

(2) Prompt reporting of all deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The report shall be contained in the report submitted in accordance with the timeframe given in Paragraph (1) of this section. .

(3) Submittal of compliance certification reports at least every twelve (12) months (or more frequently if so specified by an applicable requirement) certifying the source's compliance status with terms and conditions contained in the permit, including emission limitations, standards, or work practices. The reports shall be due to the department within thirty (30) days of the end of the permittee's reporting period. Such compliance certifications shall be submitted to the administrator as well as to the department and shall include:

(a) the identification of each term or condition of the permit that is the basis of the certification;

(b) the compliance status of the source;

(c) whether compliance was continuous or intermittent;

(d) the method(s) used for determining the compliance status of the source, currently and during the reporting period identified in the permit; and

(e) such other facts as the department may require to determine the compliance status of the source.

(4) Such additional provisions as may be specified by the administrator to determine the compliance status of the source.

F. Portable and temporary sources. The department may issue permits for portable and temporary sources which allow such sources to relocate without undergoing a permit modification. Such permits shall not apply to acid rain sources and shall include conditions to assure that:

(1) the source is installed at all locations in a manner conforming with the permit;

(2) the source shall comply with all applicable requirements and all other provisions of this part at all authorized locations;

(3) the owner or operator shall notify the department in writing at least fifteen (15) calendar days in advance of each change in location;

(4) notification shall include a legal description of where the source is to be relocated and how long it will be located there; and

(5) emissions from the source shall not, at any location, result in or contribute to an exceedance of a national ambient air quality standard or increment or visibility requirement under Part C of Title I of the federal act; the department may require dispersion modeling to assure compliance at any location.

G. Compliance. To assure and verify compliance with the terms and conditions of the permit and with this part, permits shall also include all the following.

(1) Require that, upon presentation of credentials and other documents as may be required by law, the permittee shall allow authorized representatives of the department to perform the following:

(a) enter upon the permittee's premises where a source is located or emission related activity is conducted, or where records must be kept under the conditions of the permit;

(b) have access to and copy any records that must be kept under the conditions of the permit;

(c) inspect any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and

(d) sample or monitor any substances or parameters for the purpose of assuring compliance with the permit or applicable requirements or as otherwise authorized by the federal act.

(2) Require that sources required under Paragraph (11) of Subsection D of 20.2.70.300 NMAC to have a schedule of compliance submit progress reports to the department at least semiannually, or more frequently if specified in the applicable requirement or by the department. Such progress reports shall be consistent with the schedule of compliance and requirements of Paragraph (11) of Subsection D of 20.2.70.300 NMAC and shall contain:

(a) dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved; and

(b) an explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

(3) Include such other provisions as the department may require.

H. Operational flexibility.

(1) Section 502(b)(10) changes.

(a) The permittee may make Section 502(b)(10) changes, as defined in 20.2.70.7 NMAC, without applying for a permit modification, if those changes are not title I modifications and the changes do not cause the facility to exceed the emissions allowable under the permit (whether expressed as a rate of emissions or in terms of total emissions).

(b) For each such change, the permittee shall provide written notification to the department and the administrator at least seven (7) days in advance of the proposed changes. Such notification shall include a brief description of the change within the permitted facility, the date on which the change will occur, any change in emissions, and any permit term or condition that is no longer applicable as a result of the change.

(c) The permittee and department shall attach each such notice to their copy of the relevant permit.

(d) If the written notification and the change qualify under this provision, the permittee is not required to comply with the permit terms and conditions it has identified that restrict the change. If the change does not qualify under this provision, the original terms of the permit remain fully enforceable.

(2) Emissions trading within a facility.

(a) The department shall, if an applicant requests it, issue permits that contain terms and conditions allowing for the trading of emissions increases and decreases in the permitted facility solely for the purpose of complying with a federally enforceable emissions cap that is established in the permit in addition to any applicable requirements. Such terms and conditions shall include all terms and conditions required under 20.2.70.302 NMAC to determine compliance. If applicable requirements apply to the requested emissions trading, permit conditions shall be issued only to the extent that the applicable requirements provide for trading such increases and decreases without a case-by-case approval.

(b) The applicant shall include in the application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. The department shall not include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades. The permit shall require compliance with all applicable requirements.

(c) For each such change, the permittee shall provide written notification to the department and the administrator at least seven (7) days in advance of the proposed changes. Such notification shall state when the change will occur and shall describe the changes in emissions that will result and how these increases and decreases in emissions will comply with the terms and conditions of the permit.

(d) The permittee and department shall attach each such notice to their copy of the relevant permit.

I. Off-permit changes.

(1) Permittees are allowed to make, without a permit modification, changes that are not addressed or prohibited by the operating permit, if:

(a) each such change meets all applicable requirements and shall not violate any existing permit term or condition;

(b) such changes are not subject to any requirements under Title IV of the federal act and are not Title I modifications;

(c) such changes are not subject to permit modification procedures under 20.2.70.404 NMAC; and

(d) the permittee provides contemporaneous written notice to the department and US EPA of each such change, except for changes that qualify as insignificant activities. Such written notice shall describe each such change, including the date, any change in emissions, pollutants emitted and any applicable requirement that would apply as a result of the change.

(2) The permittee shall keep a record describing changes made at the source that result in emissions of a regulated air pollutant subject to an applicable requirement, but not otherwise regulated under the permit, and the emissions resulting from those changes.

J. Permit shield.

(1) Except as provided in this part, the department shall expressly include in a Part 70 (20.2.70 NMAC) permit a provision stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance, provided that:

(a) such applicable requirements are included and are specifically identified in the permit; or

(b) the department, in acting on the permit application or significant permit modification, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.

(2) A Part 70 (20.2.70 NMAC) permit that does not expressly state that a permit shield exists for a specific provision shall be presumed not to provide such a shield for that provision.

(3) Nothing in this section or in any Part 70 (20.2.70 NMAC) permit shall alter or affect the following:

(a) the provisions of Section 303 of the federal act -- Emergency Powers, including the authority of the administrator under that section, or the provisions of the New Mexico Air Quality Control Act, Section 74-2-10 NMSA 1978;

(b) the liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance;

(c) the applicable requirements of the acid rain program, consistent with Section 408(a) of the federal act; or

(d) the ability of US EPA to obtain information from a source pursuant to Section 114 of the federal act, or the department to obtain information subject to the New Mexico Air Quality Control Act, Section 74-2-13 NMSA 1978.

(4) The permit shield shall remain in effect if the permit terms and conditions are extended past the expiration date of the permit pursuant to Subsection D of 20.2.70.400 NMAC.

(5) The permit shield shall extend to terms and conditions that allow emission increases and decreases as part of emissions trading within a facility pursuant to Paragraph (2) of Subsection H of 20.2.70.302 NMAC, and to all terms and conditions under each operating scenario included pursuant to Paragraph (3) of Subsection A of 20.2.70.302 NMAC.

(6) The permit shield shall not extend to administrative amendments under Subsection A of 20.2.70.404 NMAC, to minor permit modifications under Subsection B of 20.2.70.404 NMAC, to Section 502(b)(10) changes under Paragraph (1) of Subsection H of 20.2.70.302 NMAC, or to permit terms or conditions for which notice has been given to reopen or revoke all or part under 20.2.70.405 NMAC.

[11/30/95; A, 11/14/98; 20.2.70.302 NMAC - Rn, 20 NMAC 2.70.III.302, 06/14/02; A, 9/6/06; A, 08/01/08]

20.2.70.303 GENERAL PERMITS:

A. Issuance of General Permits:

(1) The Department may, after notice and opportunity for public participation and US EPA and affected program review, issue a general permit covering numerous similar sources. Such sources shall be generally homogenous in terms of operations, processes and emissions, subject to the same or substantially similar requirements, and not subject to case-by-case standards or requirements.

(2) Any general permit shall comply with all requirements applicable to other operating permits and shall identify criteria by which sources may qualify for the general permit.

B. Authorization to Operate under a General Permit:

(1) The owner or operator of a Part 70 source which qualifies for a general permit must:

(a) Apply to the Department for coverage under the terms of the general permit; or

(b) Apply for an operating permit consistent with 20.2.70.300 NMAC.

(2) The Department may, in the general permit, provide for applications which deviate from the requirements of subsection D of 20.2.70.300 NMAC, provided that such applications meet the requirements of the Federal Act and include all information necessary to determine qualification for, and to assure compliance with, the general permit. The Department shall review the application for authorization to operate under a general permit for completeness within thirty (30) days after its receipt of the application.

(3) The Department shall authorize qualifying sources which apply for coverage under the general permit to operate under the terms and conditions of the general permit. The Department shall take final action on a general permit authorization request within ninety (90) days of deeming the application complete.

(4) The Department may grant a request for authorization to operate under a general permit without repeating the public participation procedures required under 20.2.70.401 NMAC. Such an authorization shall not be a permitting action for purposes of administrative review under New Mexico Air Quality Control Act section 74-2-7.H NMSA 1978. Permitting action for the purposes of section 74-2-7 NMSA 1978 shall be the issuance of the general permit.

(5) Authorization to operate under a general permit shall not be granted for acid rain sources unless otherwise provided in regulations promulgated under title IV of the Federal Act.

(6) The permittee shall be subject to enforcement action for operation without an operating permit if the source is later determined not to qualify for the conditions and terms of the general permit.

[11/30/95; 20.2.70.303 NMAC - Rn, 20 NMAC 2.70.303 06/14/02]

20.2.70.304 EMERGENCY PROVISION:

A. An "emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the permittee, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventive maintenance, or careless or improper operation.

B. An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the permittee has demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

(1) an emergency occurred and that the permittee can identify the cause(s) of the emergency;

(2) the permitted facility was at the time being properly operated;

(3) during the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards or other requirements in the permit; and

(4) the permittee submitted notice of the emergency to the department within 2 working days of the time when emission limitations were exceeded due to the emergency; this notice fulfills the requirement of Paragraph (2) of Subsection E of 20.2.70.302 NMAC; this notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

C. In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.

D. This provision is in addition to any emergency or upset provision contained in any applicable requirement.

[11/30/95; 20.2.70.304 NMAC - Rn, 20 NMAC 2.70.III.304, 06/14/02; A, 9/6/06; A, 08/01/08]

20.2.70.305 to 20.2.70.399 [RESERVED]

20.2.70.400 ACTION ON PERMIT APPLICATIONS:

A. A permit (including permit renewal) or permit modification shall only be issued if all of the following conditions have been met:

(1) The Department has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit under 20.2.70.303 NMAC;

(2) Except for administrative and minor permit modifications, the Department has complied with the requirements for public participation procedures under 20.2.70.401 NMAC;

(3) Except for administrative amendments, the Department has complied with the requirements for notifying and responding to affected programs under 20.2.70.402 NMAC;

(4) The conditions of the permit provide for compliance with all applicable requirements and the requirements of this Part; and

(5) The Administrator has received a copy of the proposed permit and any notices required under 20.2.70.402 NMAC, and has not objected to issuance of the permit within the time period specified within that section.

B. The Department shall, within sixty (60) days after its receipt of an application for a permit or significant permit modification, review such application for completeness. Unless the Department determines that an application is not complete, requests additional information or otherwise notifies the applicant of incompleteness within sixty (60) days of receipt of an application, the application shall be deemed complete. When additional information is requested by the Department prior to ruling an application complete, receipt of such information shall be processed as a new application for purposes of this section. If the application is judged complete, a certified letter to that effect shall be sent to the applicant. If the application is judged incomplete a certified letter shall be sent to the applicant stating what additional information or points of clarification are necessary to judge the application complete.

C. The Department shall take final action on each permit application (including a request for permit renewal) within eighteen (18) months after an application is ruled complete by the Department, except that:

(1) For sources in operation on or before December 19, 1994 and which submit to the Department timely and complete applications in accordance with 20.2.70.300 NMAC, the Department shall take final action on one third of such applications annually over a period not to exceed three (3) years after such effective date;

(2) Any complete permit application containing an early reduction demonstration under section 112(i)(5) of the Federal Act shall be acted on within nine (9) months of deeming the application complete; and

(3) The acid rain portion of permits for acid rain sources shall be acted upon in accordance with the deadlines in title IV of the Federal Act and the regulations promulgated thereunder.

D. If a timely and complete application for a permit renewal is submitted, consistent with 20.2.70.300 NMAC, but the Department has failed to issue or disapprove the renewal permit before the end of the term of the previous permit, then the permit shall not expire and all the terms and conditions of the permit shall remain in effect until the renewal permit has been issued or disapproved.

E. Permits being renewed are subject to the same procedural requirements, including those for public participation, affected program and US EPA review, that apply to initial permit issuance.

F. The Department shall state within the draft permit the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions).

G. The Department shall grant or disapprove the permit based on information contained in the Department's administrative record. The administrative record shall consist of the application, any additional information submitted by the applicant, any evidence or written comments submitted by interested persons, any other evidence considered by the Department, and, if a public hearing is held, the evidence submitted at the hearing.

H. If the Department grants or disapproves a permit or permit modification, the Department shall notify the applicant by certified mail of the action taken and the reasons therefor. If the Department grants a permit or modification, the Department shall mail the permit or modification, including all terms and conditions, to the applicant by certified mail.

I. Voluntary Discontinuation. Upon request by the permittee, the Department shall permanently discontinue a Part 70 (20.2.70 NMAC) permit. Permit discontinuance terminates the permittee's right to operate the source under the permit. The Department shall confirm the permit discontinuance by certified letter to the permittee.

J. No permit shall be issued by failure of the Department to act on an application or renewal.

[11/30/95; 20.2.70.400 NMAC - Rn, 20 NMAC 2.70.400 06/14/02]

20.2.70.401 PUBLIC PARTICIPATION:

A. Proceedings for all permit issuances (including renewals), significant permit modifications, reopenings, revocations and terminations, and all modifications to the Department's list of insignificant activities, shall include public notice and provide an opportunity for public comment. The Department shall provide thirty (30) days for public and affected program comment. The Department may hold a public hearing on the draft permit, a proposal to suspend, reopen, revoke or terminate a permit, or for any reason it deems appropriate, and shall hold such a hearing in the event of significant public interest. The Department shall give notice of any public hearing at least thirty (30) days in advance of the hearing.

B. Public notice and notice of public hearing shall be given by publication in a newspaper of general circulation in the area where the source is located or in a state publication designed to give general public notice, to persons on a mailing list developed by the Department, including those who request in writing to be on the list, and by other means if necessary to assure adequate notice to the affected public.

C. The public notice shall identify:

(1) The affected facility;

(2) The names and addresses of the applicant or permittee and its owners;

(3) The name and address of the Department;

(4) The activity or activities involved in the permit action;

(5) The emissions change(s) involved in any permit modification;

(6) The name, address and telephone number of a person from whom interested persons may obtain additional information, including copies of the permit draft, the application, and relevant supporting materials;

(7) A brief description of the comment procedures required by the Department; and

(8) As appropriate, a statement of procedures to request a hearing, or the time and place of any scheduled hearing.

D. Notice of public hearing shall identify:

(1) The affected facility;

(2) The names and addresses of the applicant or permittee and its owners;

(3) The name and address of the Department;

(4) The activity or activities involved in the permit action;

(5) The name, address and telephone number of a person from whom interested persons may obtain additional information;

(6) A brief description of hearing procedures; and

(7) The time and place of the scheduled hearing.

E. Public hearings shall be held in the geographic area likely to be impacted by the source. The time, date, and place of the hearing shall be determined by the Department. The Department shall appoint a hearing officer. A transcript of the hearing shall be made at the request of either the Department or the applicant and at the expense of the person requesting the transcript. At the hearing, all interested persons shall be given a reasonable chance to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing.

F. The Department shall keep a record of the commenters and also of the issues raised during the public participation process so that the Administrator may fulfill his or her obligation under section 505(b)(2) of the Federal Act to determine whether a citizen petition may be granted. Such records shall be available to the public upon request.

G. The Department shall provide such notice and opportunity for participation by affected programs as is provided for by 20.2.70.402 NMAC.

[11/30/95; 20.2.70.401 NMAC - Rn, 20 NMAC 2.70.401 06/14/02]

20.2.70.402 REVIEW BY THE ADMINISTRATOR AND AFFECTED PROGRAMS:

A. Notification: The Department shall not issue an operating permit (including permit renewal or reissuance), minor permit modification or significant permit modification, until affected programs and the Administrator have had an opportunity to review the proposed permit as required under this section. Permits for source categories waived by the Administrator from this requirement and any permit terms or conditions which are not required under the Federal Act or under any of its requirements are not subject to Administrator review or approval.

(1) Within five (5) days of notification by the Department that the application has been determined complete, the applicant shall provide a copy of the complete permit application (including the compliance plan and all additional materials submitted to the Department) directly to the Administrator. The permit or permit modification shall not be issued without certification to the Department of such notification. The Department shall provide to the Administrator a copy of each draft permit, each proposed permit, each final operating permit, and any other relevant information requested by the Administrator.

(2) The Department shall provide notice of each draft permit to any affected program on or before the time that the Department provides this notice to the public under 20.2.70.401 NMAC, except to the extent that minor permit modification procedures require the timing of the notice to be different.

(3) The Department shall keep for five (5) years such records and submit to the Administrator such information as the Administrator may reasonably require to ascertain whether the state program complies with the requirements of the Federal Act or related applicable requirements.

B. Responses to Objections:

(1) No permit for which an application must be transmitted to the Administrator under this Part shall be issued by the Department if the Administrator, after determining that issuance of the proposed permit would not be in compliance with applicable requirements, objects to such issuance in writing within forty-five (45) days of receipt of the proposed permit and all necessary supporting information.

(2) If the Administrator does not object in writing under paragraph (1) of subsection B of 20.2.70.402 NMAC, any person may, within sixty (60) days after the expiration of the Administrator's 45-day review period, petition the Administrator to make such objection. Any such petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided for in 20.2.70.401 NMAC, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period. If the Administrator objects to the permit as a result of a petition filed under this paragraph, the Department shall not issue the permit until the Administrator's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day review period and prior to the Administrator's objection.

(3) The Department, as part of the submittal of the proposed permit to the Administrator (or as soon as possible after the submittal for minor permit modification procedures allowed under subsection B of 20.2.70.404 NMAC), shall notify the Administrator and any affected program in writing of any refusal by the Department to accept all recommendations for the proposed permit that the affected program submitted during the public or affected program review period. The notice shall include the Department's reasons for not accepting any such recommendation. The Department is not required to accept recommendations that are not based on federally enforceable applicable requirements.

[11/30/95; 20.2.70.402 NMAC - Rn, 20 NMAC 2.70.402 06/14/02]

20.2.70.403 PETITIONS FOR REVIEW OF FINAL ACTION:

A. Hearing before the board:

(1) Any person who participated in a permitting action before the department and who is adversely affected by such permitting action may file a petition for hearing before the board. For the purposes of this section, permitting action shall include the failure of the department to take final action on an application for a permit (including renewal) or permit modification within the time specified in this part.

(2) The petition shall be made in writing to the board within thirty (30) days from the date notice is given of the department's action and shall specify the portions of the permitting action to which the petitioner objects, certify that a copy of the petition has been mailed or hand-delivered as required by this paragraph, and attach a copy of the permitting action for which review is sought. Unless a timely request for hearing is made, the decision of the department shall be final. The petition shall be copied simultaneously to the department upon receipt of the appeal notice. If the petitioner is not the applicant or permittee, the petitioner shall mail or hand-deliver a copy of the petition to the applicant or permittee. The department shall certify the administrative record to the board.

(3) If a timely request for hearing is made, the board shall hold a hearing within sixty (60) days of receipt of the petition in accordance with New Mexico Air Quality Control Act section 74-2-7 NMSA 1978.

B. Judicial review:

(1) Any person who is adversely affected by an administrative action taken by the board pursuant to subsection A of 20.2.70.403 NMAC may appeal to the Court of Appeals in accordance with New Mexico Air Quality Control Act section 74-2-9 NMSA 1978. Petitions for judicial review must be filed no later than thirty (30) days after the administrative action.

(2) The judicial review provided for by 20.2.70.403 NMAC shall be the exclusive means for obtaining judicial review of the terms and conditions of the permit.

[11/30/95; 20.2.70.403 NMAC Rn, 20 NMAC 2.70.403 06/14/02; A, 08/01/08]

20.2.70.404 PERMIT MODIFICATIONS:

A. Administrative Permit Amendments:

(1) An administrative permit amendment is one that:

(a) Corrects typographical errors;

(b) Provides for a minor administrative change at the source, such as a change in the address or phone number of any person identified in the permit;

(c) Incorporates a change in the permit solely involving the retiring of an emissions unit;

(d) Requires more frequent monitoring or reporting by the permittee; or

(e) Any other type of change which has been determined by the Department and the Administrator to be similar to those in this paragraph.

(2) Changes in ownership or operational control of a source may be made as administrative amendments provided that:

(a) A written agreement, containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee, has been submitted to the Department, and either the Department has determined that no other change in the permit is necessary, or changes deemed necessary by the Department have been made;

(b) The new owners have submitted the application information required in paragraph (2) of subsection D of 20.2.70.300 NMAC;

(c) No grounds exist for permit termination, as set out in subparagraphs (b) and (c) of paragraph (3) of subsection A of 20.2.70.405 NMAC; and

(d) The permittee has published a public notice of the change in ownership of the source in a newspaper of general circulation in the area where the source is located.

(3) The Department may incorporate administrative permit amendments without providing notice to the public or affected programs, provided that it designates any such permit modifications as administrative permit amendments and submits a copy of the revised permit to the Administrator.

(4) The Department shall take no more than sixty (60) days from receipt of a request for an administrative permit amendment to take final action on such request. The permittee may implement the changes outlined in subparagraphs (a) through (d) of paragraph (1) of subsection A of 20.2.70.404 NMAC immediately upon submittal of the request for the administrative amendment. The permittee may implement the changes outlined in subparagraph (e) of paragraph (1) of subsection A of 20.2.70.404 NMAC or paragraph (2) of subsection A of 20.2.70.404 NMAC upon approval of the administrative amendment by the Department.

B. Minor Permit Modifications:

(1) Minor permit modification procedures may be used only for those permit modifications that:

(a) Do not violate any applicable requirement;

(b) Do not involve relaxation of existing monitoring, reporting, or recordkeeping requirements in the permit;

(c) Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

(d) Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the permittee has assumed to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include any federally enforceable emissions cap assumed to avoid classification as a title I modification and any alternative emissions limit approved pursuant to regulations promulgated under section 112(i)(5) of the Federal Act;

(e) Are not title I modifications; and

(f) Are not required by the Department to be processed as a significant modification pursuant to subsection C of 20.2.70.404 NMAC.

(2) A permittee shall not submit multiple minor permit modification applications that may conceal a larger modification that would not be eligible for minor permit modification procedures. The Department may, at its discretion, require that multiple related minor permit modification applications be submitted as a significant permit modification.

(3) An application requesting the use of minor permit modification procedures shall meet the requirements of subsections C and D of 20.2.70.300 NMAC and shall include:

(a) A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

(b) The applicant's suggested draft permit;

(c) Certification by a responsible official, consistent with subsection E of 20.2.70.300 NMAC, that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used; and

(d) If the requested permit modification would affect existing compliance plans or schedules, related progress reports, or certification of compliance requirements, an outline of such effects.

(4) The Department shall, within thirty (30) days after its receipt of an application for a minor permit modification, review such application for completeness. Unless the Department determines that an application is not complete, requests additional information or otherwise notifies the applicant of incompleteness within thirty (30)

days of receipt of an application, the application shall be deemed complete. If the application is judged complete, a certified letter to that effect shall be sent to the applicant. If the application is judged incomplete a certified letter shall be sent to the applicant stating what additional information or points of clarification are necessary to judge the application complete.

(5) Within five (5) working days of notification by the Department that the minor permit modification application has been determined complete, the applicant shall meet its obligation under subsection A of 20.2.70.402 NMAC to notify the Administrator of the requested permit modification. The Department promptly shall send any notice required under paragraph (2) of subsection A of 20.2.70.402 NMAC and subsection B of 20.2.70.402 NMAC to the Administrator and affected programs.

(6) The permittee may make the change proposed in its minor permit modification application immediately after such application is deemed complete. After the permittee makes the change allowed by the preceding sentence, and until the Department takes any of the actions specified in paragraph (7) of subsection B of 20.2.70.404 NMAC below, the permittee must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time period, the permittee need not comply with the existing permit terms and conditions it seeks to modify. If the permittee fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.

(7) The Department may not issue a final minor permit modification until after the Administrator's 45-day review period of the proposed permit modification or until US EPA has notified the Department that the Administrator will not object to issuance of the permit modification, although the Department may approve the permit modification prior to that time. Within ninety (90) days of ruling the application complete under minor permit modification procedures or within fifteen (15) days after the end of the Administrator's 45-day review period, whichever is later, the Department shall:

(a) Issue the permit modification as it was proposed;

(b) Disapprove the permit modification application;

(c) Determine that the requested modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or

(d) Revise the draft permit modification and transmit to the Administrator the new proposed permit modification as required by subsection A of 20.2.70.402 NMAC.

C. Significant Permit Modifications:

(1) A significant permit modification is:

(a) Any revision to an operating permit that does not meet the criteria under the provisions for administrative permit amendments under subsection A of 20.2.70.404 NMAC or for minor permit modifications under subsection B of 20.2.70.404 NMAC above;

(b) Any modification that would result in any relaxation in existing monitoring, reporting or recordkeeping permit terms or conditions;

(c) Any modification for which action on the application would, in the judgment of the Department, require decisions to be made on significant or complex issues; and

(d) Changes in ownership which do not meet the criteria of paragraph (2) of subsection A of 20.2.70.404 NMAC.

(2) For significant modifications which are not required to undergo preconstruction permit review and approval, changes to the source which qualify as significant permit modifications shall not be made until the Department has issued the operating permit modification.

(3) For significant modifications which have undergone preconstruction permit review and approval, the permittee shall:

(a) Before commencing operation, notify the Department in writing of any applicable requirements and operating permit terms and conditions contravened by the modification, emissions units affected by the change, and allowable emissions increases resulting from the modification; and

(b) Within twelve (12) months after commencing operation, file a complete operating permit modification application.

(4) Where an existing operating permit would specifically prohibit such change, the permittee must obtain an operating permit modification before commencing operation or implementing the change.

(5) Significant permit modifications shall meet all requirements of this Part for permit issuance, including those for applications, public participation, review by affected programs and review by the Administrator.

(6) The Department shall complete review on the majority of significant permit modification applications within nine (9) months after the Department rules the applications complete.

D. Modifications to Acid Rain Sources: Administrative permit amendments and permit modifications for purposes of the acid rain portion of the permit shall be governed by regulations promulgated by the Administrator under title IV of the Federal Act.
[11/30/95; 20.2.70.404 NMAC - Rn, 20 NMAC 2.70.404 06/14/02]

20.2.70.405 PERMIT REOPENING, REVOCATION OR TERMINATION:

A. Action by the Department:

(1) Each permit shall include provisions specifying the conditions under which the permit will be reopened prior to the expiration of the permit. A permit shall be reopened and revised for any of the following, and may be revoked and reissued for subparagraphs (c) or (d) of the following:

(a) Additional applicable requirements under the Federal Act become applicable to a major source with a remaining permit term of three (3) or more years. Such a reopening shall be completed not later than eighteen (18) months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms or conditions have been extended past the expiration date of the permit pursuant to subsection D of 20.2.70.400 NMAC;

(b) Additional requirements (including excess emissions requirements) become applicable to a source under the acid rain program promulgated under title IV of the Federal Act. Upon approval by the Administrator, excess emissions offset plans shall be deemed to be incorporated into the permit;

(c) The Department or the Administrator determines that the permit contains a material mistake or that inaccurate statements were made in establishing the terms or conditions of the permit; or

(d) The Department or the Administrator determines that the permit must be revised or revoked and reissued to assure compliance with the applicable requirements.

(2) Proceedings to reopen and revise, or revoke and reissue, a permit shall affect only those parts of the permit for which cause to reopen or revoke exists. Units for which permit conditions have been revoked shall not be operated until permit reissuance. Reopenings shall be made as expeditiously as practicable.

(3) A permit, or an authorization to operate under a general permit, may be terminated when:

(a) The permittee fails to meet the requirements of an approved compliance plan;

(b) The permittee has been in significant or repetitious non-compliance with the operating permit terms or conditions;

(c) The applicant or permittee has exhibited a history of willful disregard for environmental laws of any state or Tribal authority, or of the United States;

(d) The applicant or permittee has knowingly misrepresented a material fact in any application, record, report, plan, or other document filed or required to be maintained under the permit;

(e) The permittee falsifies, tampers with or renders inaccurate any monitoring device or method required to be maintained under the permit;

(f) The permittee fails to pay fees required under the fee schedule in 20.2.71 NMAC (Operating Permit Emission Fees); or

(g) The Administrator has found that cause exists to terminate the permit.

(4) The Department shall, by certified mail, provide a notice of intent to the permittee at least thirty (30) days in advance of the date on which a permit is to be reopened or revoked, or terminated, except that the Department may provide a shorter time period in the case of an emergency. The notice shall state that the permittee may, within 30 (thirty) days of receipt, submit comments or request a hearing on the proposed permit action.

B. Action by the Administrator: Within ninety (90) days, or longer if the Administrator extends this period, after receipt of written notification that the Administrator has found that cause exists to terminate, modify or revoke and reissue a permit, the Department shall forward to the Administrator a proposed determination of termination, modification, or revocation and reissuance, as appropriate. Within ninety (90) days from receipt of an Administrator objection to a proposed determination, the Department shall address and act upon the Administrator's objection.

C. Compliance Orders: Notwithstanding any action which may be taken by the Department or the Administrator under subsections A and B of 20.2.70.405 NMAC, a compliance order issued pursuant to New Mexico Air Quality Control Act section 74-2-12 NMSA 1978 may include a suspension or revocation of any permit or portion thereof.
[11/30/95; 20.2.70.405 NMAC - Rn, 20 NMAC 2.70.405 06/14/02]

20.2.70.406 CITIZEN SUITS: Pursuant to section 304 of the Federal Act, 42 USC 7604, any person may commence certain civil actions under the Federal Act.
[11/30/95; 20.2.70.406 NMAC - Rn, 20 NMAC 2.70.406 06/14/02]

20.2.70.407 VARIANCES: Pursuant to New Mexico Air Quality Control Act section 74-2-8 NMSA 1978, applicants and permittees may seek a variance from the non-federally enforceable provisions of this Part.
[11/30/95; 20.2.70.407 NMAC - Rn, 20 NMAC 2.70.407 06/14/02]

20.2.70.408 ENFORCEMENT: Notwithstanding any other provision in the New Mexico State Implementation Plan approved by the Administrator, any credible evidence may be used for the purpose of establishing whether a person has violated or is in violation of the terms or conditions of a permit issued pursuant to this Part.

A. Information from the use of the following methods is presumptively credible evidence of whether a violation has occurred at the source:

(1) A monitoring or information gathering method approved for the source pursuant to this Part and incorporated in an operating permit; or

(2) Compliance methods specified in the New Mexico State Implementation Plan.

B. The following testing, monitoring or information gathering methods are presumptively credible testing, monitoring or information gathering methods:

(1) Any federally enforceable monitoring or testing methods, including those in 40 CFR parts 51, 60, 61 and 75; and

(2) Other testing, monitoring or information gathering methods that produce information comparable to that produced by any method under subsection A of 20.2.70.408 NMAC or paragraph (1) of subsection B of 20.2.70.408 NMAC.
[11/30/95; 20.2.70.408 NMAC - Rn, 20 NMAC 2.70.408 06/14/02]

20.2.70.409 to 20.2.70.499 [RESERVED]

20.2.70.500 to 20.2.70.599 [RESERVED]

HISTORY OF 20.2.70 NMAC:
Pre NMAC History: The material in this part was derived from that previously filed with the commission of public records - state records center and archives.
EIB/AQCR 770, Air Quality Control Regulation 770 - Operating Permits, filed 11/15/93.

History of Repealed Material: [RESERVED]

Other History:
EIB/AQCR 770, Air Quality Control Regulation 770 - Operating Permits, filed 11/15/93 was **renumbered** into first version of the New Mexico Administrative Code as 20 NMAC 2.70, Operating Permits, filed 10/30/95;
20 NMAC 2.70, Operating Permits, filed 10/30/95 was **renumbered, reformatted and replaced** by 20.2.70 NMAC, Operating Permits, effective 06/14/02.

TITLE 20 ENVIRONMENTAL PROTECTION
CHAPTER 2 AIR QUALITY (STATEWIDE)
PART 74 PERMITS - PREVENTION OF SIGNIFICANT DETERIORATION (PSD)

20.2.74.1 ISSUING AGENCY: New Mexico Environmental Improvement Board
[07/20/95; 20.2.74.1 NMAC - Rn, 20 NMAC 2.74.100, 10/31/02]

20.2.74.2 SCOPE: Any person constructing any new major stationary source or major modification as defined in this Part, that emits or will emit regulated pollutants in an attainment or unclassified area.
[07/20/95; 20.2.74.2 NMAC - Rn, 20 NMAC 2.74.101, 10/31/02]

20.2.74.3 STATUTORY AUTHORITY: The Environmental Improvement Board "shall promulgate regulations and standards in...air quality management" (NMSA 1978, section 74-1-8.A) and "the environmental improvement board...shall adopt...regulations to attain and maintain national ambient air quality standards and prevent or abate air pollution..." (NMSA 1978, section 74-2-5.B).
[07/20/95; 20.2.74.3 NMAC - Rn, 20 NMAC 2.74.102, 10/31/02]

20.2.74.4 DURATION: Permanent.
[07/20/95; 20.2.74.4 NMAC - Rn, 20 NMAC 2.74.103, 10/31/02]

20.2.74.5 EFFECTIVE DATE: July 20, 1995, except where a later date is cited at the end of a section or paragraph.
[07/20/95; 01/01/00; 20.2.74.5 NMAC - Rn, 20 NMAC 2.74.104, 10/31/02]
[The latest effective date of any section in this Part is 01/01/2011.]

20.2.74.6 OBJECTIVE: The purpose of this Part is to require any person constructing any new major stationary source or major modification as defined in this Part, that emits or will emit regulated pollutants in an attainment or unclassified area, to obtain a permit from the Department in accordance with the requirements of this Part prior to the construction or modification.
[07/20/95; 20.2.74.6 NMAC - Rn, 20 NMAC 2.74.105, 10/31/02]

20.2.74.7 DEFINITIONS: Terms used but not defined in this part shall have the meaning given them by 20.2.2 NMAC (Definitions) (formerly AQCR 100). As used in this part the following definitions shall apply.

A. **"Act"** means the Federal Clean Air Act, as amended, 42 U. S. C. Sections 7401 et seq.

B. **"Actual emissions"** means the actual rate of emissions of a regulated new source review pollutant from an emissions unit, as determined in accordance with Paragraphs (2) through (4) of this subsection.

(1) This definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under 20.2.74.320 NMAC. Instead, Subsections G and AR of this section shall apply for those purposes.

(2) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(3) The department may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(4) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

C. **"Administrator"** means the administrator of the U.S. environmental protection agency (EPA) or an authorized representative.

D. **"Adverse impact on visibility"** means visibility impairment which interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the class I federal area. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency, and time of the visibility impairments and how these factors correlate with the following: 1)

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times of visitor use of the class I federal area; and 2) the frequency and timing of natural conditions that reduce visibility. This term does not include effects on integral vistas as defined in 40 CFR 51.301 Definitions.

E. **"Allowable emissions"** means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(1) the applicable standards as set forth in 40 CFR Parts 60 and 61;

(2) the applicable state implementation plan emissions limitation, including those with a future compliance date; or

(3) the emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

F. **"Attainment area"** means, for any air pollutant, an area which is shown by monitored data or which is calculated by air quality modeling not to exceed any national ambient air quality standard for such pollutant, and is so designated under Section 107 (d) (1) (D) or (E) of the act.

G. **"Baseline actual emissions"** means the rate of emissions, in tons per year, of a regulated new source review pollutant, as determined in accordance with the following.

(1) For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding when the owner or operator begins actual construction of the project. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(a) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(b) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

(c) For a regulated new source review pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used For each regulated new source review pollutant.

(d) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Subparagraph (b) of this paragraph.

(2) For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the department for a permit required either under this part or under a plan approved by the administrator, whichever is earlier, except that the 10-year period shall not include any period earlier than November 15, 1990.

(a) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(b) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

(c) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the state has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of 40 CFR 51.165(a)(3)(ii)(G).

(d) For a regulated new source review pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated new source review pollutant.

(e) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by Subparagraphs (b) and (c) of this paragraph.

(3) For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

(4) For a PAL for a stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in Paragraph (1) of this subsection, for other existing emissions units in accordance with the procedures contained in Paragraph (2) of this subsection, and for a new emissions unit in accordance with the procedures contained in Paragraph (3) of this subsection.

H. "Baseline area" means all lands designated as attainment or unclassifiable in which the major source or major modification would construct or would have an air quality impact equal to or greater than one microgram per cubic meter (annual average) of the pollutant for which the minor source baseline date is established. The major source or major modification establishes the minor source baseline date (see the definition "minor source baseline date" in this part). Lands are designated as attainment or unclassifiable under Section 107(d)(1)(D) or (E) of the act within each federal air quality control region in the state of New Mexico. Any baseline area established originally for TSP (total suspended particulates) increments shall remain in effect and shall apply for purposes of determining the amount of available PM-10 increments. A TSP baseline area shall not remain in effect if the department rescinds the corresponding minor source baseline date (see "minor source baseline date" in this part).

I. "Baseline concentration" means that ambient concentration level that exists in the baseline area at the time of the applicable minor source baseline date.

(1) A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include:

(a) the actual emissions, as defined in this section, representative of sources in existence on the applicable minor source baseline date, except as provided in Paragraph (2) of this subsection;

(b) the allowable emissions of major stationary sources that commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.

(2) The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

(a) actual emissions, as defined in this section, from any major stationary source on which construction commenced after the major source baseline date; and

(b) actual emissions increases and decreases, as defined in Subsection B of this section, at any stationary source occurring after the minor source baseline date.

J. "Begin actual construction" means, in general, initiation of physical onsite construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying underground pipework and construction of permanent storage structures. With respect to a change in method of operations, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

K. "Best Available Control Technology (BACT)" means an emissions limitation (including a visible emission standard) based on the maximum degree of reduction for each regulated pollutant which would be emitted from any proposed major stationary source or major modification, which the secretary determines is achievable on a case-by-case basis. This determination will take into account energy, environmental, and economic impacts and other costs. The determination must be achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of such pollutants. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR Parts 60 and 61. If the department determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice, or operation, and shall provide for compliance by means which achieve equivalent results.

L. "Building, structure, facility, or installation" means all of the pollutant emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are

under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "major group" (i.e., which have the same first two digit code) as described in the standard industrial classification (SIC) manual, 1972, as amended by the 1977 supplement (U. S. government printing office stock numbers 4101-0066 and 003-005-00176-0, respectively) or any superseding SIC manual.

M. **"Class I federal area"** means any federal land that is classified or reclassified as "class I" as described in 20.2.74.108 NMAC.

N. **"Commence"** means, as applied to construction of a major stationary source or major modification, that the owner or operator has all necessary preconstruction approvals or permits and has:

(1) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(2) Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake and complete, within a reasonable time, a program of actual construction.

O. **"Construction"** means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

P. **"Continuous emissions monitoring system (CEMS)"** means all of the equipment that may be required to meet the data acquisition and availability requirements of this section, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

Q. **"Continuous emissions rate monitoring system (CERMS)"** means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

R. **"Continuous parameter monitoring system (CPMS)"** means all of the equipment necessary to meet the data acquisition and availability requirements of this section, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O2 or CO2 concentrations), and to record average operational parameter value(s) on a continuous basis.

S. **"Department"** means the New Mexico environment department.

T. **"Electric utility steam generating unit"** means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 megawatts electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

U. **"Emissions unit"** means any part of a stationary source that emits or would have the potential to emit any regulated new source review pollutant and includes an electric utility steam generating unit as defined in this section. For purposes of this section, there are two types of emissions units as described in the following.

(1) A new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than 2 years from the date such emissions unit first operated.

(2) An existing emissions unit is any emissions unit that does not meet the requirements in Paragraph (1) of this subsection. A replacement unit, as defined in this section, is an existing unit.

V. **"Federal land manager"** means, with respect to any lands in the United States, a federal level cabinet secretary of a federal level department (e.g. interior dept.) with authority over such lands.

W. **"Federally enforceable"** means all limitations and conditions which are enforceable by the administrator, including:

(1) those requirements developed pursuant to 40 CFR Parts 60 and 61;

(2) requirements within any applicable state implementation plan;

(3) any permit requirements established pursuant to 40 CFR 52.21; or

(4) under regulations approved pursuant to 40 CFR Part 51, Subpart I including 40 CFR 51.165 and 40 CFR 51.166.

X. **"Fugitive emissions"** means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

Y. **"Greenhouse gas"** for the purpose of this part is defined as the aggregate group of the following six gases: carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

Z. **"High terrain"** means any area having an elevation nine hundred (900) feet or more above the base of a source's stack.

AA. **"Indian governing body"** means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

AB. **"Innovative Control Technology"** means any system of air pollution control that has not been adequately demonstrated in practice. But such system would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or achieving at least comparable reductions at lower cost in terms of energy, economics, or non-air quality environmental impacts.

AC. **"Low terrain"** means any area other than high terrain.

AD. **"Lowest achievable emission rate"** means, for any source, the more stringent rate of emissions based on the following:

(1) the most stringent emissions limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

(2) the most stringent emissions limitation which is achieved in practice by such class or category of stationary source; this limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the stationary source. In no event shall the application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

AE. **"Major modification"** means any physical change in or change in the method of operation of a major stationary source that would result in: a significant emissions increase (as defined in of this section) of a regulated new source review pollutant (as defined in this section); and a significant net emissions increase of that pollutant from the major stationary source. Any significant emissions increase (as defined in this section) from any emissions units or net emissions increase (as defined in this section) at a major stationary source that is significant for volatile organic compounds or nitrogen oxides shall be considered significant for ozone.

(1) A physical change or change in the method of operation shall not include:

(a) routine maintenance, repair, and replacement;

(b) use of an alternative fuel or raw material by reason of an order under Section 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(c) use of an alternative fuel by reason of an order or rule under Section 125 of the act;

(d) use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(e) use of an alternative fuel or raw material by a stationary source which:

(i) the source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975 pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.165 or 40 CFR 51.166; or

(ii) the source is approved to use under any permit issued under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.166;

(f) an increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit which was established after January 6, 1975, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.165 or 40 CFR 51.166;

(g) any change in ownership at a stationary source;

(h) the installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(i) the state implementation plan for the state in which the project is located; and

(ii) other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(i) the installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit; this exemption shall apply on a pollutant-by-pollutant basis;

(j) the reactivation of a very clean coal-fired electric utility steam generating unit.

(2) This definition shall not apply with respect to a particular regulated new source review pollutant when the major stationary source is complying with the requirements under 20.2.74.320 NMAC for a PAL for that pollutant. Instead, the definition at Paragraph (8) of Subsection B of 20.2.74.320 NMAC shall apply.

AF. **"Major source baseline date"** means:

(1) in the case of particulate matter and sulfur dioxide, January 6, 1975; and

(2) in the case of nitrogen dioxide, February 8, 1988.

AG. "Major stationary source" means the following.

(1) Any stationary source listed in table 1 (20.2.74.501 NMAC) which emits, or has the potential to emit, emissions equal to or greater than one hundred (100) tons per year of any regulated new source review pollutant.

(2) Any stationary source not listed in table 1 (20.2.74.501 NMAC) and which emits or has the potential to emit two hundred fifty (250) tons per year or more of any regulated new source review pollutant.

(3) Any physical change that would occur at a stationary source not otherwise qualifying under Paragraphs (1) or (2) of this subsection if the change would constitute a major stationary source by itself.

(4) A major source that is major for volatile organic compounds or nitrogen oxides shall be considered major for ozone.

(5) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this section whether it is a major stationary source, unless the source belongs to one of the stationary source categories found in Table 1 (20.2.74.501 NMAC) or any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the act.

AH. "Mandatory class I federal area" means any area identified in the Code of Federal Regulations (CFR), 40 CFR Part 81, Subpart D. See 20.2.74.108 NMAC for a list of these areas in New Mexico.

AI. "Minor source baseline date" means the earliest date after the trigger date on which the owner or operator of a major stationary source or major modification subject to 40 CFR 52.21 or to this part submits a complete application under the relevant regulations.

(1) The trigger date is:

(a) in the case of particulate matter and sulfur dioxide, August 7, 1977; and

(b) in the case of nitrogen dioxide, February 8, 1988.

(2) Any minor source baseline date established originally for the TSP (total suspended particulates) increments shall remain in effect and shall apply for purposes of determining the amount of available PM-10 increments. The department may rescind any TSP minor source baseline date where it can be shown, to the department 's satisfaction, that the emissions increase from the major stationary source, or the net emissions increase from the major modification, responsible for triggering that date, did not result in a significant amount of PM-10 emissions.

AJ. "Natural conditions" includes naturally occurring phenomena that reduce visibility as measured in terms of visual range, contrast or coloration.

AK. "Necessary preconstruction approvals or permits" means those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations which are part of the New Mexico state implementation plan.

AL. "Net emissions increase" means, with respect to any regulated new source review pollutant emitted by a major stationary source, the following.

(1) The amount by which the sum of the following exceeds zero.

(a) The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to Subsection D of 20.2.74.200 NMAC.

(b) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this paragraph shall be determined as provided in Subsection G, except that Subparagraph (c) of Paragraph (1) and Subparagraph (d) of Paragraph (2) of Subsection G of this section shall not apply.

(2) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs within the time period five years prior to the commencement of construction on the particular change and the date that the increase from the particular change occurs.

(3) An increase or decrease in actual emissions is creditable only if:

(a) it occurs within the time period five years prior to the commencement of construction on the particular change and the date that the increase from the particular change occurs; and

(b) the department has not relied on it in issuing a permit for the source under regulations approved pursuant to this section, which permit is in effect when the increase in actual emissions from the particular change occurs.

(4) An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides that occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.

(5) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(6) A decrease in actual emissions is creditable only to the extent that:

(a) the old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(b) it is enforceable as a practical matter at and after the time that actual construction on the particular change begins; and

(c) it has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(7) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

(8) Paragraph (2) of Subsection B of this section shall not apply for determining creditable increases and decreases.

AM. "Nonattainment area" means an area which has been designated under Section 107 of the Federal Clean Air Act as nonattainment for one or more of the national ambient air quality standards by EPA.

AN. "Portable stationary source" means a source which can be relocated to another operating site with limited dismantling and reassembly.

AO. "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollutant control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitations or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

AP. "Predictive emissions monitoring system (PEMS)" means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O2 or CO2 concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis.

AQ. "Project" means a physical change in, or change in method of operation of, an existing major stationary source.

AR. "Projected actual emissions" means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated new source review pollutant in any one of the 5 years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit that regulated new source review pollutant, and full utilization of the unit would result in a significant emissions increase, or a significant net emissions increase at the major stationary source. In determining the projected actual emissions (before beginning actual construction), the owner or operator of the major stationary source:

(1) shall consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory authorities, and compliance plans under the approved plan; and

(2) shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions; and

(3) shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions under Subsection G of this section and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or,

(4) in lieu of using the method set out in Paragraphs (1) through (3) of this subsection, may elect to use the emissions unit's potential to emit, in tons per year, as defined in Subsection AR of this section.

AS. "Regulated new source review pollutant", for purposes of this part, means the following:

(1) any pollutant for which a national ambient air quality standard has been promulgated and any constituents or precursors for such pollutants identified by the administrator (e.g., volatile organic compounds and nitrogen oxides are precursors for ozone);

(2) any pollutant that is subject to any standard promulgated under Section 111 of the act;

(3) any class I or II substance subject to a standard promulgated under or established by title VI of the act; or

(4) any pollutant that otherwise is subject to regulation under the act as defined in Subsection AZ of this section.

(5) Notwithstanding Paragraphs (1) through (4) of Subsection AS of this section, the term "regulated NSR pollutant" shall not include any or all hazardous air pollutants either listed in section 112 of the act, or added to the list pursuant to section 112(b)(2) of the act, and which have not been delisted pursuant to section 112(b)(3) of the act, unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under section 108 of the act.

AT. "Replacement unit" means an emission unit for which all of the following criteria are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

(1) The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1), or the emissions unit completely takes the place of an existing emissions unit.

(2) The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

(3) The replacement unit does not change the basic design parameter(s) of the process unit.

(4) The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

AU. "Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this section, secondary emissions must be specific, well defined, quantifiable, and impact the same general areas as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

AV. "Secretary" means the cabinet level secretary of the New Mexico environment department or his or her successor.

AW. "Significant" means in reference to a net emissions increase or the potential of a source to emit air pollutants, a rate of emission that would equal or exceed any of the rates listed in table 2 (20.2.74.502 NMAC).

AX. "Significant emissions increase" means, for a regulated new source review pollutant, an increase in emissions that is significant (as defined in Subsection AW of this section) for that pollutant.

AY. "Stationary source" means any building, structure, facility, or installation which emits, or may emit, any regulated new source review pollutant.

AZ. "Subject to regulation" means, for any air pollutant, that the pollutant is subject to either a provision in the act, or a nationally-applicable regulation codified by the administrator in subchapter C of 40 CFR Chapter I, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity. Except that:

(1) "greenhouse gases (GHGs)" shall not be subject to regulation except as provided in paragraphs AZ(4) and (5) of this section and shall not be subject to regulation if the stationary source maintains its total source-wide emissions below the GHG PAL level, meets the requirements in Subpart 20.2.74.320 NMAC, and complies with the PAL permit containing the GHG PAL;

(2) for purposes of Paragraphs (3) through (5) of Subsection AZ of this section, the term "tons per year CO2 equivalent emissions (CO2e)" shall represent an amount of GHGs emitted, and shall be computed as follows:

(a) multiplying the mass amount of emissions (tons per year), for each of the six greenhouse gases in the pollutant GHGs, by the gas's associated global warming potential published at table A-1 to subpart A of 40 CFR part 98 - Global Warming Potentials;. For purposes of this paragraph, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of non-fossilized and biodegradable organic material originating from plants, animals or micro-organisms (including products, by-products, residues and waste from agriculture, forestry and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material);

(b) sum the resultant value from Subparagraph (a) of Paragraph (2) of Subsection AZ of this section for each gas to compute a tons per year CO2e;

(3) the term "emissions increase" as used in Paragraphs (4) and (5) of Subsection AZ of this section shall mean that both a significant emissions increase (as calculated using the procedures in Subsection D of 20.2.74.200 NMAC) and a significant net emissions increase (as defined in Subsections AL, AW and AX of 20.2.74.7 NMAC) occur. For the pollutant GHGs, an emissions increase shall be based on tons per year CO2e, and shall be calculated assuming the pollutant GHGs is a regulated NSR pollutant, and "significant" is defined as 75,000 tons per year CO2e instead of applying the value in table 2 of 20.2.74 NMAC;

(4) beginning January 2, 2011, the pollutant GHGs is subject to regulation if:

(a) the stationary source is a new major stationary source for a regulated NSR pollutant that is not GHGs, and also will emit or will have the potential to emit 75,000 tons per year CO2e or more; or

(b) the stationary source is an existing major stationary source for a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of a regulated NSR pollutant that is not GHGs, and also will have an emissions increase of 75,000 tons per year CO2e or more; and

(5) beginning July 1, 2011, in addition to the provisions in Paragraph (4) of this subsection, the pollutant GHGs shall also be subject to regulation:

(a) at a new stationary source that will emit or have the potential to emit 100,000 tons per year CO2e; or

(b) at an existing stationary source that emits of has the potential to emit 100,000 tons per year CO2e, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tons per year CO2e or more;

(6) if a federal court stays, invalidates or otherwise renders unenforceable by the US EPA, in whole or in part, the prevention of significant deterioration and Title V greenhouse gas tailoring rule (75 FR 31514, June 3, 2010), the definition "subject to regulation" shall be enforceable by the department only to the extent that it is enforceable by US EPA.

BA. "Temporary source" means a stationary source which changes its location or ceases to exist within two years from the date of initial start of operations.

BB. "Visibility impairment" means any humanly perceptible change in visibility (visual range, contrast, coloration) from that which would have existed under natural conditions.

BC. "Volatile organic compound (VOC)" means any organic compound which participates in atmospheric photochemical reactions; that is, any organic compound other than those which the administrator designates as having negligible photochemical reactivity.

[07/20/95; 01/01/00; 20.2.74.7 NMAC - Rn, 20 NMAC 2.74.107, 10/31/02; A, 1/22/06; A, 8/31/09; A, 01/01/11; **A, XX/XX/XX**]

20.2.74.8 AMENDMENT AND SUPERSESSION OF PRIOR REGULATIONS: This Part amends and supersedes Air Quality Control Regulation (AQCR) 707, which was originally filed on February 14, 1984, and subsequently refiled on July 15, 1986; August 1, 1988; and May 29, 1990. All references to AQCR 707 in any other rule shall be understood as a reference to this Part.

[07/20/95; 20.2.74.8 NMAC - Rn, 20 NMAC 2.74.106, 10/31/02]

20.2.74.9 DOCUMENTS: Documents cited in this Part may be viewed at the New Mexico Environment Department, Air Quality Bureau, Harold Runnels Building, 1190 St. Francis Drive, Santa Fe, NM 87503 [1301 Siler Rd., Bldg. B, Santa Fe, NM 87507].

[07/20/95; 20.2.74.9 NMAC - Rn, 20 NMAC 2.74.109, 10/31/02; A, 01/01/11]

20.2.74.10 SEVERABILITY. If any provision of this part, or the application of such provision to any person or circumstance, is held invalid, the remainder of this part, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

[20.2.74.10 NMAC - N, 1/22/06]

20.2.74.11 CONSTRUCTION. This part shall be liberally construed to carry out its purpose.

[20.2.74.11 NMAC - N, 1/22/06]

20.2.74.12 SAVINGS CLAUSE. Repeal or supersession of prior versions of this part shall not affect any administrative or judicial action initiated under those prior versions.

[20.2.74.12 NMAC - N, 1/22/06]

20.2.74.13 COMPLIANCE WITH OTHER REGULATIONS. Compliance with this part does not relieve a person from the responsibility to comply with any other applicable federal, state, or local regulations. [20.2.74.13 NMAC - N, 1/22/06]

20.2.74.14 LIMITATION OF DEFENSE. The existence of a valid permit under this part shall not constitute a defense to a violation of any section of this part, except the requirement for obtaining a permit. [20.2.74.14 NMAC - N, 1/22/06]

20.2.74.15 to 20.2.74.107 [RESERVED]

20.2.74.108 RESTRICTIONS ON AREA CLASSIFICATIONS:

A. Mandatory Class I Federal areas:

(1) The following areas which were in existence on August 7, 1977, shall be mandatory Class I Federal areas and may not be redesignated:

(a) International parks (all of them);
(b) National wilderness areas which exceed 5,000 acres in size;
(c) National memorial parks which exceed 5,000 acres in size; and
(d) National parks which exceed 6,000 acres in size.

(2) Specifically for New Mexico, these areas are:

(a) Bandelier Wilderness, administered by NPS;
(b) Bosque del Apache Wilderness, administered by NFWS;
(c) Carlsbad Caverns National Park, administered by NPS;
(d) Gila Wilderness, administered by NFS;
(e) Pecos Wilderness, administered by NFS;
(f) Salt Creek Wilderness, administered by NFWS;
(g) San Pedro Parks Wilderness, administered by NFS;
(h) Wheeler Peak Wilderness, administered by NFS; and
(i) White Mountain Wilderness, administered by NFS; where: NPS = National Park Service, NFWS = National Fish and Wildlife Service, NFS = National Forest Service.

B. Areas which may be redesignated only as Class I or Class II:

(1) The following areas may be redesignated only as Class I or II:

(a) an area, as of August 7, 1977, which exceeds 10,000 acres in size and is a national monument, national primitive area, national preserve, national recreational area, national wild and scenic river, national wildlife refuge; or

(b) a national park or national wilderness area established after August 7, 1977 which exceeds 10,000 acres in size.

(2) Specifically for New Mexico, these areas include (but are not necessarily limited to):

(a) Apache Kid Wilderness, administered by NFS;
(b) Bandelier National Monument, administered by NPS;
(c) Bitter Lake National Wildlife Refuge, administered by NFWS;
(d) Blue Range Wilderness, administered by NFS;
(e) Bosque del Apache National Wildlife Refuge, administered by NFWS;
(f) Capitan Mountains Wilderness, administered by NFS;
(g) Cebolla Wilderness, administered by BLM;
(h) Chama River Canyon Wilderness, administered by NFS;
(i) Cruces Basin Wilderness, administered by NFS;
(j) De-na-zin Wilderness, administered by BLM;
(k) El Malpais National Monument, administered by NPS;
(l) Latir Peak Wilderness, administered by NFS;
(m) Manzano Mountain Wilderness, administered by NFS;
(n) San Andres National Wildlife Refuge, administered by NFWS;
(o) Sandia Mountain Wilderness, administered by NFS;
(p) Sevilleta National Wildlife Refuge, administered by NFWS;
(q) West Malpais Wilderness, administered by BLM;
(r) White Sands National Monument, administered by NPS; and

(s) Withington Wilderness, administered by NFS; where: NFS = National Forest Service, NPS = National Park Service, NFWS = National Fish and Wildlife Service, BLM = Bureau of Land Management.
[07/20/95; 20.2.74.108 NMAC - Rn, 20 NMAC 2.74.108, 10/31/02]

20.2.74.109 to 20.2.74.199 [RESERVED]

20.2.74.200 APPLICABILITY.

A. The requirements of this part apply to the construction of any new major stationary source (as defined in 20.2.74.7 NMAC) or any project at an existing major stationary source in an area designated as attainment or unclassifiable.

B. The requirements of Sections 300 through 306, 400 and 403 of this part apply to the construction of any new major stationary source or the major modification of any existing major stationary source, except as this part otherwise provides.

C. No new major stationary source or major modification to which the requirements of Subsections A, B, C and D of 20.2.74.300 NMAC, and Sections 301, 302, 303, 304, 305, 306, 400 and 403 of this part apply shall begin actual construction without a permit that states that the major stationary source or major modification will meet those requirements.

D. Applicability procedures.

(1) Except as otherwise provided in Subsections E and F of this section, and consistent with the definition of major modification contained in 20.2.74.7 NMAC, a project is a major modification for a regulated new source review pollutant if it causes two types of emissions increases - a significant emissions increase (as defined in 20.2.74.7 NMAC), and a significant net emissions increase (as defined in Subsections AL and AX of 20.2.74.7 NMAC). The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

(2) The procedure for calculating (before beginning actual construction) whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type of emissions units being modified, according to Paragraphs (3) through (4) of this subsection. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source (i.e., the second step of the process) is contained in the definition in 20.2.74.7 NMAC. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(3) Actual-to-projected-actual applicability test for projects that involve existing emissions units. A significant emissions increase of a regulated new source review pollutant is projected to occur if the sum of the difference between the projected actual emissions (as defined in 20.2.74.7 NMAC) and the baseline actual emissions (as defined in Paragraphs (1) and (2) of Subsection G of 20.2.74.7 NMAC) for each existing emissions unit, equals or exceeds the significant amount for that pollutant (as defined in 20.2.74.7 NMAC).

(4) Actual-to-potential test for projects that involve construction of a new emissions unit(s). A significant emissions increase of a regulated new source review pollutant is projected to occur if the sum of the difference between the potential to emit (as defined in 20.2.74.7 NMAC) from each new emissions unit following completion of the project and the baseline actual emissions (as defined in Paragraph (3) of Subsection G of 20.2.74.7 NMAC) of these units before the project equals or exceeds the significant amount for that pollutant (as defined in 20.2.74.7 NMAC).

(5) Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in Paragraphs (3) and (4) of this subsection as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant. For example, if a project involves both an existing emissions unit and a new emissions unit, the projected increase is determined by summing the values determined using the method specified in Paragraph (3) of this subsection for the existing unit and determined using the method specified in Paragraph (4) of this subsection for the new unit.

E. For any major stationary source for a PAL for a regulated new source review pollutant, the major stationary source shall comply with requirements under 20.2.74.320 NMAC.
[07/20/95; 20.2.74.200 NMAC - Rn, 20 NMAC 2.74.200, 10/31/02; A, 1/22/06; A, 01/01/11]

20.2.74.201 EXEMPTIONS: This Part shall not apply to:

A. Each regulated pollutant emitted for which the area the source proposes to locate in is designated as nonattainment;

B. Sources or modifications that are part of a nonprofit health or nonprofit educational institution and are approved by the Secretary;

C. A portable stationary source which has previously received a permit pursuant to this Part; and

(1) The owner or operator proposes to relocate the source, and emissions from the source at the new location will be temporary; and

(2) The emissions from the source would not exceed its allowable emission rate; and

(3) The emissions from the source would not impact any Class I Federal area nor any area where an applicable increment is known to be violated; and

(4) Reasonable notice is given to the Department prior to the relocation identifying the proposed new location and probable duration of operation at the new location. Such notice shall be given to the Department not less than ten (10) days in advance of the proposed relocation unless a different time interval is previously approved by the Department;

D. A source or modification that would be major only if fugitive emissions, to the extent they are quantifiable, are considered in calculating the potential to emit or net emissions increase, and the source does not belong to:

(1) Any category in Table 1 of this Part (20.2.74.501 NMAC); or

(2) Any other stationary source category which as of August 7, 1980 is being regulated under section 111 or 112 of the Act.

[07/20/95; 20.2.74.201 NMAC - Rn, 20 NMAC 2.74.201, 10/31/02]

20.2.74.202 to 20.2.74.299 [RESERVED]

20.2.74.300 OBLIGATIONS OF OWNERS OR OPERATORS OF SOURCES:

A. Any owner or operator who begins actual construction or operates a source or modification without, or not in accordance with, a permit issued under the requirements of this part shall be subject to enforcement action.

B. The issuance of a permit does not relieve any person from the responsibility of complying with the provisions of the Air Quality Control Act, sections 74-2-1 to 74-2-17, NMSA 1978; any applicable regulations of the board; and any other requirements under local, state, or federal law.

C. Approval to construct shall become invalid if: 1) construction is not commenced within eighteen (18) months after receipt of such approval; 2) if construction is discontinued for a period of eighteen (18) months or more; or 3) if construction is not completed within a reasonable time. For a phased construction project, each phase must commence construction within eighteen (18) months of the projected and approved commencement date. The secretary may extend the eighteen (18) month period upon a satisfactory showing that an extension is justified.

D. If a source or modification becomes a major stationary source or major modification solely due to a relaxation in any enforceable limitation (which limitation was established after August 7, 1980), on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then this part shall apply to the source or modification as though construction had not yet commenced.

E. The following specific provisions apply to projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where the owner or operator elects to use the method specified in Paragraphs (1) through (3) of Subsection AR of 20.2.74.7 NMAC for calculating projected actual emissions.

(1) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

(a) a description of the project;

(b) identification of the emissions unit(s) whose emissions of a regulated new source review pollutant could be affected by the project; and

(c) a description of the applicability test used to determine that the project is not a major modification for any regulated new source review pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under Paragraph (3) of Subsection AR of 20.2.74.7 NMAC and an explanation for why such amount was excluded, and any netting calculations, if applicable.

(2) If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in Paragraph (1) of this subsection to the department. Nothing in this paragraph shall be construed to require the owner or operator of such a

unit to obtain any determination from the department; however, necessary preconstruction approvals and/or permits must be obtained before beginning actual construction.

(3) The owner or operator shall monitor the emissions of any regulated new source review pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in Subparagraph (b) of Paragraph (1) of this subsection; and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of 5 years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated new source review pollutant at such emissions unit.

(4) If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the department within 60 days after the end of each year during which records must be generated under Subparagraph (c) of Paragraph (1) of this subsection setting out the unit's annual emissions during the calendar year that preceded submission of the report.

(5) If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the department if the annual emissions, in tons per year, from the project identified in Paragraph (1) of this subsection, exceed the baseline actual emissions (as documented and maintained pursuant to Subparagraph (c) of Paragraph (1) of this subsection) by a significant amount (as defined in 20.2.74.7 NMAC) for that regulated new source review pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to Subparagraph (c) of Paragraph (1) of this subsection. Such report shall be submitted to the department within 60 days after the end of such year. The report shall contain the following:

(a) the name, address and telephone number of the major stationary source;

(b) the annual emissions as calculated pursuant to Paragraph (3) of this subsection; and

(c) any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).

F. The owner or operator of the source shall make the information required to be documented and maintained pursuant to Subsection E of this section available for review upon request for inspection by the department or the general public pursuant to the requirements contained in 40 CFR 70.4(b)(3)(viii).

[07/20/95; 20.2.74.300 NMAC - Rn, 20 NMAC 2.74.300, 10/31/02; A, 1/22/06; A, 01/01/11]

20.2.74.301 SOURCE INFORMATION: The owner or operator of a proposed source or modification shall submit all information necessary to perform any analysis or make any determination required under this Part.

A. Information shall include, but is not limited to:

(1) A description of the nature, location, design capacity, and typical operating schedule of the source or modification, including specifications and drawings showing the design and plant layout; and

(2) A detailed schedule of construction of the source or modification; and

(3) A detailed description of the planned system of continuous emission reduction for the source or modification, emission estimates, and other information necessary to determine that Best Available Control Technology will be applied.

B. Upon request by the Department, the owner or operator shall also provide information on:

(1) The air quality impact of the source or modification, including meteorologic and topographic data necessary to estimate such impact; and

(2) The air quality impacts, and the nature and extent of any or all general commercial, residential, industrial, and other growth which has occurred since August 7, 1977 in the area the source or modification would affect.

[07/20/95; 20.2.74.301 NMAC - Rn, 20 NMAC 2.74.301, 10/31/02]

20.2.74.302 CONTROL TECHNOLOGY REQUIREMENTS:

A. A new major stationary source shall apply Best Available Control Technology for each regulated pollutant that it would have the potential to emit in amounts equal to or greater than the significance levels as listed in Table 2 of this Part (20.2.74.502 NMAC). This requirement applies to each proposed emissions unit or operation that will emit such pollutant.

B. A major modification shall apply Best Available Control Technology for each regulated pollutant at the source when a significant net emissions increase occurs as defined in this Part. This requirement applies to each proposed emissions unit or operation where a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit.

C. For phased construction projects, the determination of Best Available Control Technology shall be reviewed and modified as appropriate at the latest reasonable time but no later than eighteen (18) months prior to

commencement of construction of each independent phase of the project. At such time, the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of Best Available Control Technology for the source.

D. The Department may approve a system of innovative control technology for the major stationary source or major modification if:

(1) The proposed control system would not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function; and

(2) The owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under Best Available Control Technology by a date specified by the Department. Such date shall not be later than four (4) years from the time of startup or seven (7) years from permit issuance; and

(3) The source or modification would meet the requirements of 20.2.74.302 NMAC and 20.2.74.303 NMAC based on the emission rate that the system of innovative control technology would be required to meet on the date specified by the Department; and

(4) During the interim period of achieving the permitted emission level, the source or modification would not:

(a) Cause or contribute to a violation of an applicable national ambient air quality standard; nor

(b) Impact any Class I Federal area; nor

(c) Impact any area where an applicable increment is known to be violated; and

(5) All other applicable requirements including those for public participation have been met.

E. The Department shall withdraw any approval to employ a system of innovative control technology if:

(1) The proposed system fails by the specified date to achieve the required continuous emissions reduction rate; or

(2) The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare, or safety; or

(3) The Department decides at any time that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety.

F. If a source or modification fails to meet the required level of continuous emission reduction within the specified time period or the approval is withdrawn in accordance with subsection E of 20.2.74.302 NMAC, the Department may allow the source or modification up to an additional three (3) years to meet the requirement for the application of Best Available Control Technology. This shall be accomplished through use of a demonstrated system of control.

G. If the owner or operator of a major stationary source or major modification previously issued a permit under this Part applies for an extension (as provided for under subsection C of 20.2.74.300 NMAC), and the new proposed date of construction is greater than eighteen (18) months from the date the permit would become invalid, the determination of Best Available Control Technology shall be reviewed and modified as appropriate before such an extension is granted. At such time, the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of Best Available Control Technology for the source.

H. With respect to PM_{10}, for the case where PM_{10} emissions cannot be quantified, the Best Available Control Technology limitation may be defined in terms of particulate matter emissions.

[07/20/95; 20.2.74.302 NMAC - Rn, 20 NMAC 2.74.302, 10/31/02]

20.2.74.303 AMBIENT IMPACT REQUIREMENTS:

A. The requirements of this section shall apply to each pollutant emitted by a new major stationary source or major modification in amounts equal to or greater than those in Table 2 of this Part (20.2.74.502 NMAC). For particulate matter, the source will only be required to perform ambient impact analysis for PM_{10} when the source has the potential to emit significant amounts of PM_{10} (Table 2, 20.2.74.502 NMAC).

B. The allowable emission increases from the proposed source or modification, including secondary emissions, in conjunction with all other applicable emissions increases or reductions, including secondary emissions, shall not cause or contribute to air pollution in violation of:

(1) Any National Ambient Air Quality Standard in any location; or

(2) Any applicable maximum allowable increase as shown in Table 4 of this Part (20.2.74.504 NMAC) over the baseline concentrations in any area.

(3) The owner or operator of the proposed major stationary source or major modification shall demonstrate that neither paragraph (1) nor paragraph (2) of 20.2.74.303 NMAC will occur.
[07/20/95; 20.2.74.303 NMAC - Rn, 20 NMAC 2.74.303, 10/31/02]

20.2.74.304 ADDITIONAL IMPACT REQUIREMENTS:

A. The owner or operator of the proposed major stationary source or major modification shall provide an analysis of the impairment to visibility, soils, and vegetation that would occur as a result of the source or modification and general commercial, residential, industrial, and other growth associated with the source or modification. The owner or operator need not provide an analysis of the impact on vegetation having no significant commercial or recreational value. The analysis can use data or information available from the Department.

B. The owner or operator shall also provide an analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial, and other growth associated with the source or modification.
[07/20/95; 20.2.74.304 NMAC - Rn, 20 NMAC 2.74.304, 10/31/02]

20.2.74.305 AMBIENT AIR QUALITY MODELING: All estimates of ambient concentrations required by this Part shall be based on applicable air quality models, data bases, and other requirements as specified in EPA's Guideline on Air Quality Models (EPA-450/2-78-027R, July, 1986), its revisions, or any superseding EPA document, and approved by the Department. Where an air quality impact model specified in the Guideline on Air Quality Models is inappropriate, the model may be modified or another model substituted. Any substitution or modification of a model must be approved by the Department. Notification shall be given by the Department of such a substitution or modification and the opportunity for public comment provided for in fulfilling the public notice requirements in subsection B of 20.2.74.400 NMAC. The Department will seek EPA approval of such substitutions or modifications.
[07/20/95; 20.2.74.305 NMAC - Rn, 20 NMAC 2.74.305, 10/31/02]

20.2.74.306 MONITORING REQUIREMENTS:

A. Any application for a permit under this Part shall contain an analysis of ambient air quality. Air quality data can be that measured by the applicant or that available from a government agency in the area affected by the major stationary source or major modification. The analysis shall contain the following:

(1) For a major stationary source, each pollutant for which the potential to emit is equal to or greater than the significant emission rates as listed in Table 2 of this Part (20.2.74.502 NMAC); or

(2) For a major modification, each pollutant that would result in a significant net emission increase.

B. If no National Ambient Air Quality Standard (NAAQS) for a pollutant exists, and there is an acceptable method for monitoring that pollutant, the analysis shall contain such air quality monitoring data as the Department determines is necessary to assess ambient air quality for that pollutant.

C. Continuous air quality monitoring data shall be required for all pollutants for which a National Ambient Air Quality Standard exists. Such data shall be submitted to the Department for at least the one (1) year period prior to receipt of the permit application. The Department has the discretion to:

(1) Determine that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one year but not less than four months; or

(2) Determine that existing air quality monitoring data is representative of air quality in the affected area and accept such data in lieu of additional monitoring by the applicant.

D. Ozone monitoring shall be performed if monitoring data is required for volatile organic compounds. Post construction ozone monitoring data may be submitted in lieu of providing preconstruction data as required under subsection C of 20.2.74.306 NMAC if the owner or operator of the proposed major source or major modification satisfies all the provisions of 40 CFR Part 51, Appendix S, Section IV.

E. The Department may require monitoring of visibility in any Class I Federal area where the Department determines that an adverse impact on visibility may occur due primarily to the operations of the proposed new source or modification. Such monitoring shall be conducted following procedures approved by the Department and subject to the following:

(1) Visibility monitoring methods specified by the Department shall be reasonably available and not require any research and development; and

(2) The cost of visibility monitoring required by the Department shall not exceed fifty percent (50%) of the cost of ambient monitoring required by this Part. If ambient monitoring is not required, the cost shall be estimated as if it were required for each pollutant to which this Part applies.

(3) Both preconstruction and post construction visibility monitoring may be required. In each case, the duration of such monitoring shall not exceed one (1) year.

F. The owner or operator of a major stationary source or major modification shall conduct post construction ambient monitoring as the Department determines is necessary to validate attainment of ambient air quality standards and to assure that increments are not exceeded.

G. The owner or operator of a major stationary source or major modification shall meet the requirements of 40 CFR 58, Appendix B during the operation of monitoring stations for purposes of satisfying the requirements of this section.

H. The Department has the discretion to exempt a stationary source or modification from the requirements of this section with respect to monitoring for a particular pollutant if the emissions of the pollutant from the new source or the net emissions increase of the pollutant from the modification would cause, in any area, increases in ambient concentrations less than the levels listed in Table 3 of this Part (20.2.74.503 NMAC).

I. The Department shall exempt a stationary source or modification from the requirements of this section with respect to preconstruction monitoring for a particular pollutant if:

(1) For ozone, volatile organic compound emissions are less than one hundred (100) tons per year; or

(2) The air pollutant is not a regulated pollutant; or

(3) The existing ambient concentrations of the pollutant in the area affected by the source or modification are less than the concentrations listed in Table 3 of this Part (20.2.74.503 NMAC).

[07/20/95; 20.2.74.306 NMAC - Rn, 20 NMAC 2.74.306, 10/31/02]

20.2.74.307 TEMPORARY SOURCE EXEMPTIONS: The requirements of 20.2.74.304 NMAC and 20.2.74.306 NMAC shall not apply to a temporary source subject to this Part for a given pollutant if the allowable emissions of such pollutant would not impact any Class I Federal area or any areas where an applicable increment is violated and would be temporary.

[07/20/95; 20.2.74.307 NMAC - Rn, 20 NMAC 2.74.307, 10/31/02]

20.2.74.308 to 20.2.74.319 [RESERVED]

20.2.74.320 ACTUALS PLANTWIDE APPLICABILITY LIMITS (PALs)

A. Applicability.

(1) The department may approve the use of an actuals PAL, including for GHGs on either a mass basis or a CO2e basis, for any existing major stationary source or any existing GHG-only source if the PAL meets the requirements in this section. The term "PAL" shall mean "actuals PAL" throughout this section.

(2) Any physical change in or change in the method of operation of a major stationary source or a GHG-only source that maintains its total source-wide emissions below the PAL level, meets the requirements of this section, and complies with the PAL permit:

(a) is not a major modification for the PAL pollutant;

(b) does not have to be approved through the requirements of this part; and

(c) is not subject to the provisions in Subsection D of 20.2.74.300 NMAC (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the major new source review program); and

(d) does not make GHGs subject to regulation as defined by Subsection AZ of 20.2.74.7 NMAC.

(3) Except as provided under Subparagraph (c) of Paragraph (2) of this subsection, a major stationary source or GHG-only source shall continue to comply with all applicable federal or state requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

B. Definitions applicable to this section.

(1) Actuals PAL for a major stationary source means a PAL based on the baseline actual emissions (as defined in 20.2.74.7 NMAC) of all emissions units (as defined in 20.2.74.7 NMAC) at the source, that emit or have the potential to emit the PAL pollutant. For a GHG-only source, "actual PAL" means a PAL based on the baseline actual emissions (as defined in Paragraph (13) of this Subsection) of all emissions units (as defined in Paragraph (14) of this Subsection) at the source, that emit or have the potential to emit GHGs.

(2) Allowable emissions means "allowable emissions" as defined in 20.2.74.7 NMAC, except as this definition is modified in accordance with the following.

(a) The allowable emissions for any emissions unit shall be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

(b) An emissions unit's potential to emit shall be determined using the definition in 20.2.74.7 NMAC, except that the words "or enforceable as a practical matter" should be added after "federally enforceable".

(3) Small emissions unit means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant, as defined in Subsection AW of 20.2.74.7 NMAC or in the act, whichever is lower. For a GHG PAL issued on a CO2e basis, "small emissions unit" means an emissions unit that emits or has the potential to emit less than the amount of GHGs on a CO2e basis defined as "significant" for the purposes of Paragraph (3) of Subsection AZ of 20.2.74.7 NMAC at the time the PAL permit is being issued.

(4) Major emissions unit means:

(a) any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL pollutant in an attainment area; or

(b) any emissions unit that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant as defined by the act for nonattainment areas. For example, in accordance with the definition of major stationary source in Section 182(c) of the act, an emissions unit would be a major emissions unit for VOC if the emissions unit is located in a serious ozone nonattainment area and it emits or has the potential to emit 50 or more tons of VOC per year; or

(c) for a GHG PAL issued on a CO2e basis, any emissions unit that emits or has potential to emit equal to or greater than the amount of GHGs on a CO2e basis that would be sufficient for a new source to trigger permitting requirements under Subsection AZ of 20.2.74.7 NMAC at the time the PAL permit is being issued.

(5) Plantwide applicability limitation (PAL) means an emission limitation expressed on a mass basis in tons per year, or expressed in tons per year CO2e for a CO2e-based GHG emission limitation, for a pollutant at a major stationary source or GHG-only source, that is enforceable as a practical matter and established source-wide in accordance with this section.

(6) PAL effective date generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(7) PAL effective period means the period beginning with the PAL effective date and ending 10 years later.

(8) PAL major modification means, notwithstanding the definitions for major modification, ~~and~~ net emissions increase, and subject to regulation in 20.2.74.7 NMAC, any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

(9) PAL permit means the major new source review permit, the minor new source review permit, or the state operating permit under a program that is approved into the plan, or the title V permit issued by the department that establishes a PAL for a major stationary source or a GHG-only source.

(10) PAL pollutant means the pollutant for which a PAL is established at a major stationary source or a GHG-only source. For a GHG-only source, the only available PAL pollutant is greenhouse gases.

(11) Significant emissions unit means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level (as defined in Subsection AW of 20.2.74.7 NMAC or in the act, whichever is lower) for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit as defined in Paragraph (4) of this subsection. For a GHG PAL issued on a CO2e basis, "significant emissions unit" means any emissions unit that emits or has the potential to emit GHGs on a CO2e basis in amounts equal to or greater than the amount that would qualify the unit as a small emissions unit as defined in Paragraph (3) of this Subsection, but less than the amount that would qualify the unit as a major emissions unit as defined in Subparagraph (c) of Paragraph (4) of this Subsection.

(12) GHG-only source means any existing station source that emits or has the potential to emit GHGs in the amount equal to or greater than the amount of GHGs on a mass basis that would be sufficient for a new source to trigger permitting requirements for GHGs under paragraph Subsection AG of 20.2.74.7 NMAC and the amount of GHGs on a CO2e basis that would be sufficient for a new source to trigger permitting requirements for GHGs under Subsection AZ of 20.2.74.7 NMAC at the time the PAL permit is being issued, but does not emit or have the potential to emit any other non-GHG regulated new source review pollutant at or above the applicable major source threshold. A GHG-only source may only obtain a PAL for GHG emissions under 20.2.74.320 NMAC.

(13) Baseline actual emissions for a GHG PAL means the average rate, in tons per year CO2e or tons per year GHG, as applicable, at which the emissions unit actually emitted GHGs during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the

department for a permit required under this section or by the department for a permit required by a plan, whichever is earlier. For any existing electric utility steam generating unit, "baseline actual emissions" for a GHG PAL means the average rate, in tons per year CO2e or tons per year GHG, as applicable, at which the emissions unit actually emitted the GHGs during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding either the date the owner or operator begins actual construction of the project, except that the department shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(a) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(b) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

(c) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the stationary source must currently comply, had such stationary source been required to comply with such limitations during the consecutive 24-month period.

(d) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual GHG emissions and for adjusting this amount if required by Subparagraphs (b) and (c) of this subsection.

(14) Emissions unit with respect to GHGs means any part of a stationary source that emits or has the potential to emit GHGs. For purposes of this section, there are two types of emissions units as described in the following:

(a) A new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than 2 years from the date such emissions unit first operated.

(b) An existing emissions unit is any emissions unit that does not meet the requirements in Subparagraph (a) of this Paragraph.

(15) Minor source means any stationary source that does not meet the definition of major stationary source in Subsection AG of 20.2.74.7 NMAC for any pollutant at the time the PAL is issued.

C. Permit application requirements. As part of a permit application requesting a PAL, the owner or operator of a major stationary source or a GHG-only source shall submit the following information to the department for approval.

(1) A list of all emissions units at the source designated as small, significant or major based on their potential to emit. In addition, the owner or operator of the source shall indicate which, if any, federal or state applicable requirements, emission limitations, or work practices apply to each unit.

(2) Calculations of the baseline actual emissions (with supporting documentation). Baseline actual emissions are to include emissions associated not only with operation of the unit, but also emissions associated with startup, shutdown, and malfunction.

(3) The calculation procedures that the major stationary source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by Subsection M of this section.

(4) As part of a permit application requesting a GHG PAL, the owner or operator of a major stationary source or a GHG-only source shall submit a statement by the source owner or operator that clarifies whether the source is an existing major source as defined in Paragraphs (1) and (2) of Subsection AG of 20.2.74.7 NMAC or a GHG-only source as defined in Paragraph (12) of Subsection B of this Subsection.

D. General requirements for establishing PALs.

(1) The department may establish a PAL at a major stationary source or a GHG-only source, provided that at a minimum, the following requirements are met.

(a) The PAL shall impose an annual emission limitation expressed on a mass basis in tons per year, or expressed in tons per year CO2e, that is enforceable as a practical matter, for the entire major stationary source or GHG-only source. For each month during the PAL effective period after the first 12 months of establishing a PAL, the major stationary source or GHG-only source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months is less than the PAL (a 12-month average, rolled monthly). For each month during the first 11 months from the PAL effective date, the major stationary source or GHG-only source owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.

(b) The PAL shall be established in a PAL permit that meets the public participation requirements in Subsection E of this section.

(c) The PAL permit shall contain all the requirements of Subsection G of this section.

(d) The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major stationary source or GHG-only source.

(e) Each PAL shall regulate emissions of only one pollutant.

(f) Each PAL shall have a PAL effective period of 10 years.

(g) The owner or operator of the major stationary source or GHG-only source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in Subsections L through N of this section for each emissions unit under the PAL through the PAL effective period.

(2) At no time (during or after the PAL effective period) are emissions reductions of a PAL pollutant that occur during the PAL effective period creditable as decreases for purposes of offsets under 40 CFR 51.165(a)(3)(ii) unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.

E. Public participation requirements for PALs. PALs for existing major stationary sources or GHG-only sources shall be established, renewed, or increased, through a procedure that is consistent with 40 CFR 51.160 and 161. This includes the requirement that the department provide the public with notice of the proposed approval of a PAL permit and at least a 30-day period for submittal of public comment. The department must address all material comments before taking final action on the permit.

F. Setting the 10-year actuals PAL level.

(1) Except as provided in Paragraph (2) of this subsection, the actuals PAL level for a major stationary source or GHG-only source shall be established as the sum of the baseline actual emissions (as defined in 20.2.74.7 NMAC or, for GHGs, Paragraph (13) of Subsection B of 20.2.74.320 NMAC) of the PAL pollutant for each emissions unit at the source; plus an amount equal to the applicable significant level for the PAL pollutant under Subsection AW of 20.2.74.7 NMAC or under the act, whichever is lower. When establishing the actuals PAL level, for a PAL pollutant, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive 24-month period may be used for each different PAL pollutant. Emissions associated with units that were permanently shutdown after this 24-month period must be subtracted from the PAL level. The department shall specify a reduced PAL level(s) (in tons/yr) in the PAL permit to become effective on the future compliance date(s) of any applicable federal or state regulatory requirement(s) that the department is aware of prior to issuance of the PAL permit. For instance, if the source owner or operator will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NOx to a new rule limit of 30 ppm, then the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such unit(s).

(2) For newly constructed units (which do not include modifications to existing units) on which actual construction began after the 24-month period, in lieu of adding the baseline actual emissions as specified in Paragraph (1) of this subsection, the emissions must be added to the PAL level in an amount equal to the potential to emit of the units.

(3) For CO2e based GHG PAL, the actuals PAL level shall be established as the sum of the GHGs baseline actual emissions (as defined in Paragraph (13) of Subsection B of 20.2.74.320 NMAC) of GHGs for each emissions unit at the source, plus an amount equal to the amount defined as "significant" on a CO2e basis for the purposes of Subsection AZ of 20.2.74.7 NMAC at the time the PAL permit is being issued. When establishing the actuals PAL level for a CO2e-based PAL, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. Emissions associated with units that were permanently shut down after this 24-month period must be subtracted from the PAL level. The department shall specify a reduced PAL level (in tons per year CO2e) in the PAL permit to become effective on the future compliance date(s) of any applicable federal or state regulatory requirement(s) that the department is aware of prior to issuance of the PAL permit.

G. Contents of the PAL permit. The PAL permit shall contain, at a minimum, the following information.

(1) The PAL pollutant and the applicable source-wide emission limitation in tons per year or tons per year CO2e.

(2) The PAL permit effective date and the expiration date of the PAL (PAL effective period).

(3) Specification in the PAL permit that if a major stationary source or GHG-only source owner or operator applies to renew a PAL in accordance with Subsection J of this section before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by the department.

(4) A requirement that emission calculations for compliance purposes include emissions from startups, shutdowns and malfunctions.

(5) A requirement that, once the PAL expires, the major stationary source or GHG-only source is subject to the requirements of Subsection I of this section.

(6) The calculation procedures that the major stationary source or GHG-only source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by Paragraph (1) of Subsection C of this section.

(7) A requirement that the major stationary source or GHG-only source owner or operator monitor all emissions units in accordance with the provisions under Subsection M of this section.

(8) A requirement to retain the records required under Subsection M of this section on site. Such records may be retained in an electronic format.

(9) A requirement to submit the reports required under Subsection N of this section by the required deadlines.

(10) Any other requirements that the department deems necessary to implement and enforce the PAL.

(11) A permit for a GHG PAL issued to a GHG-only source shall also include a statement denoting that GHG emissions at the source will not be subject to regulation under Subsection AZ of 20.2.74.7 NMAC as long as the source complies with the PAL.

H. PAL effective period and reopening of the PAL permit.

(1) PAL effective period. The PAL effective period shall be 10 years.

(2) Reopening of the PAL permit.

(a) During the PAL effective period, the department shall reopen the PAL permit to:

(i) correct typographical/calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL;

(ii) reduce the PAL if the owner or operator of the major stationary source creates creditable emissions reductions for use as offsets under 40 CFR 51.165(a)(3)(ii); and

(iii) revise the PAL to reflect an increase in the PAL as provided under Subsection K of this section.

(b) The department may reopen the PAL permit for the following:

(i) to reduce the PAL to reflect newly applicable federal requirements (for example, NSPS) with compliance dates after the PAL effective date;

(ii) to reduce the PAL consistent with any other requirement, that is enforceable as a practical matter, and that the department may impose on the major stationary source or GHG-only source under the plan; and

(iii) to reduce the PAL if the department determines that a reduction is necessary to avoid causing or contributing to a NAAQS or PSD increment violation, or to an adverse impact on an AQRV that has been identified for a federal class I area by a federal land manager and for which information is available to the general public.

(c) Except for the permit reopening in Item (i) of Subparagraph (a) of Paragraph (2) of this subsection for the correction of typographical/calculation errors that do not increase the PAL level, all reopenings shall be carried out in accordance with the public participation requirements of Subsection E of this section.

I. Expiration of a PAL. Any PAL that is not renewed in accordance with the procedures in Subsection J of this section shall expire at the end of the PAL effective period, and the following requirements shall apply.

(1) Each emissions unit (or each group of emissions units) that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the following procedures.

(a) Within the time frame specified for PAL renewals in Paragraph (2) of Subsection J of this section, the major stationary source or GHG-only source shall submit a proposed allowable emission limitation for each emissions unit (or each group of emissions units, if such a distribution is more appropriate as decided by the department) by distributing the PAL allowable emissions for the major stationary source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as required under Paragraph (5) of Subsection J of this section, such distribution shall be made as if the PAL had been adjusted.

(b) The department shall decide whether and how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the department determines is appropriate.

(2) Each emissions unit(s) shall comply with the allowable emission limitation on a 12-month rolling basis. The department may approve the use of monitoring systems (source testing, emission factors, etc.) other than CEMS, CERMS, PEMS or CPMS to demonstrate compliance with the allowable emission limitation.

(3) Until the department issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under Subparagraph (b) of Paragraph (1) of Subsection I of this section, the source shall continue to comply with a source-wide, multi-unit emissions cap equivalent to the level of the PAL emission limitation.

(4) Any physical change or change in the method of operation at the major stationary source or GHG-only source will be subject to major new source review requirements if such change meets the definition of major modification in 20.2.74.7 NMAC.

(5) The major stationary source or GHG-only source owner or operator shall continue to comply with any New Mexico or federal applicable requirements (BACT, RACT, NSPS, etc.) that may have applied either during the PAL effective period or prior to the PAL effective period except for those emission limitations that had been established pursuant to Subsection D of 20.2.74.300 NMAC, but were eliminated by the PAL in accordance with the provisions in Subparagraph (c) of Paragraph (2) of Subsection A of this section.

J. Renewal of a PAL.

(1) The department shall follow the procedures specified in Subsection E of this section in approving any request to renew a PAL for a major stationary source or GHG-only source, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the department.

(2) Application deadline. A major stationary source or GHG-only source owner or operator shall submit a timely application to the department to request renewal of a PAL. A timely application is one that is submitted at least 6 months prior to, but not earlier than 18 months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a major stationary source or GHG-only source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

(3) Application requirements. The application to renew a PAL permit shall contain the following information.

(a) The information required in Subsection C of this section.

(b) A proposed PAL level.

(c) The sum of the potential to emit of all emissions units under the PAL (with supporting documentation).

(d) Any other information the owner or operator wishes the department to consider in determining the appropriate level for renewing the PAL.

(4) PAL adjustment. In determining whether and how to adjust the PAL, the department shall consider the options outlined in Subparagraphs (a) and (b) of this paragraph. However, in no case may any such adjustment fail to comply with Subparagraph (c) of this paragraph.

(a) If the emissions level calculated in accordance with Subsection F of this section is equal to or greater than 80 percent of the PAL level, the department may renew the PAL at the same level without considering the factors set forth in Subparagraph (b) of this paragraph.

(b) The department may set the PAL at a level that it determines to be more representative of the source's baseline actual emissions, or that it determines to be appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the department in its written rationale.

(c) Notwithstanding Subparagraphs (a) and (b) of this paragraph:

(i) if the potential to emit of the major stationary source or GHG-only source is less than the PAL, the department shall adjust the PAL to a level no greater than the potential to emit of the source; and

(ii) the department shall not approve a renewed PAL level higher than the current PAL, unless the major stationary source or GHG-only source has complied with the provisions of Subsection K of this section (increasing a PAL).

(5) If the compliance date for a state or federal requirement that applies to the PAL source occurs during the PAL effective period, and if the department has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or title V permit renewal, whichever occurs first.

K. Increasing a PAL during the PAL effective period.

(1) The department may increase a PAL emission limitation only if the major stationary source or GHG-only source complies with the following provisions.

(a) The owner or operator of the major stationary source or GHG only source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application shall identify the emissions unit(s) contributing to the increase in emissions so as to cause the major stationary or GHG-only source's emissions to equal or exceed its PAL.

(b) As part of this application, the major stationary source or GHG-only source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT equivalent controls, plus the sum of the allowable emissions of the new or modified emissions unit(s), exceeds the PAL. The level of control that would result from BACT equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT analysis at the time the application is submitted, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding 10 years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.

(c) The owner or operator obtains a major new source review permit for all emissions unit(s) identified in Subparagraph (a) of this paragraph, regardless of the magnitude of the emissions increase resulting from them (that is, no significant levels apply). These emissions unit(s) shall comply with any emissions requirements resulting from the major new source review process (for example, BACT), even though they have also become subject to the PAL or continue to be subject to the PAL.

(d) The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

(2) The department shall calculate the new PAL as the sum of the allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT equivalent controls as determined in accordance with Subparagraph (b) of Paragraph (1) of this subsection), plus the sum of the baseline actual emissions of the small emissions units.

(3) The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of Subsection E of this section.

L. Monitoring requirements for PALs.

(1) General requirements.

(a) Each PAL permit must contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time or CO2e per unit of time. Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.

(b) The PAL monitoring system must employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in Paragraph (2) of this subsection and must be approved by the department.

(c) Notwithstanding Subparagraph (b) of this paragraph, you may also employ an alternative monitoring approach that meets Subparagraph (a) of this paragraph if approved by the department.

(d) Failure to use a monitoring system that meets the requirements of this section renders the PAL invalid.

(2) The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in Paragraphs (3) through (9) of this subsection:

(a) Mass balance calculations for activities using coatings or solvents;

(b) CEMS;

(c) CPMS or PEMS; and

(d) emission factors.

(3) Mass balance calculations. An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:

(a) provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;

(b) assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and

(c) where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner or operator must use the highest value of the range to

calculate the PAL pollutant emissions unless the department determines there is site-specific data or a site-specific monitoring program to support another content within the range.

(4) CEMS. An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:

(a) CEMS must comply with applicable performance specifications found in 40 CFR Part 60, Appendix B; and

(b) CEMS must sample, analyze, and record data at least every 15 minutes while the emissions unit is operating.

(5) CPMS or PEMS. An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:

(a) the CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameter(s) and the PAL pollutant emissions across the range of operation of the emissions unit; and

(b) each CPMS or PEMS must sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the department, while the emissions unit is operating.

(6) Emission factors. An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:

(a) all emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;

(b) the emissions unit shall operate within the designated range of use for the emission factor, if applicable; and

(c) if technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within 6 months of PAL permit issuance, unless the department determines that testing is not required.

(7) A source owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.

(8) Notwithstanding the requirements in Paragraphs (3) through (7) of this subsection, where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameter(s) and the PAL pollutant emissions rate at all operating points of the emissions unit, the department shall, at the time of permit issuance:

(a) establish default value(s) for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating point(s); or

(b) determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameter(s) and the PAL pollutant emissions is a violation of the PAL.

(9) Revalidation. All data used to establish the PAL pollutant must be revalidated through performance testing or other scientifically valid means approved by the department. Such testing must occur at least once every 5 years after issuance of the PAL.

M. Recordkeeping requirements.

(1) The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of this section and of the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for 5 years from the date of such record.

(2) The PAL permit shall require an owner or operator to retain a copy of the following records, for the duration of the PAL effective period plus 5 years:

(a) a copy of the PAL permit application and any applications for revisions to the PAL; and

(b) each annual certification of compliance pursuant to title V and the data relied on in certifying the compliance.

N. Reporting and notification requirements. The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the department in accordance with the applicable title V operating permit program. The reports shall meet the following requirements.

(1) Semi-annual report. The semi-annual report shall be submitted to the department within 30 days of the end of each reporting period. This report shall contain the following information:

(a) the identification of owner and operator and the permit number;

(b) total annual emissions (expressed on a mass-basis in tons per year, or expressed in tons per year CO2e) based on a 12-month rolling total for each month in the reporting period recorded pursuant to Paragraph (1) of Subsection M of this section;

(c) all data relied upon, including, but not limited to, any quality assurance or quality control data, in calculating the monthly and annual PAL pollutant emissions;

(d) a list of any emissions units modified or added to the major stationary source or GHG-only source during the preceding 6-month period;

(e) the number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken;

(f) a notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by Paragraph (7) of Subsection L of this section; and

(g) a signed statement by the responsible official (as defined by the applicable title V operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

(2) Deviation report. The major stationary source or GHG-only source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL requirements, including periods where no monitoring is available. A report submitted pursuant to Paragraph (2) of Subsection E of 20.2.70.302 NMAC shall satisfy this reporting requirement. The deviation reports shall be submitted within the time limits prescribed by the applicable program implementing Paragraph (2) of Subsection E of 20.2.70.302 NMAC. The reports shall contain the following information:

(a) the identification of owner and operator and the permit number;

(b) the PAL requirement that experienced the deviation or that was exceeded;

(c) emissions resulting from the deviation or the exceedance; and

(d) a signed statement by the responsible official (as defined by the applicable title V operating permit program) certifying the truth, accuracy, and completeness of the information provided in the report.

(3) Revalidation results. The owner or operator shall submit to the department the results of any revalidation test or method within three months after completion of such test or method.

O. Transition requirements.

(1) The department may not issue a PAL that does not comply with the requirements in this section after the administrator has approved regulations incorporating these requirements into a plan.

(2) The department may supersede any PAL which was established prior to the date of approval of the plan by the administrator with a PAL that complies with the requirements of this section.

[20.2.74.320 NMAC - N, 1/22/06; A, 01/01/11; **A, XX/XX/XX**]

20.2.74.321 to 20.2.74.399 [RESERVED]

20.2.74.400 PUBLIC PARTICIPATION AND NOTIFICATION:

A. The Department shall, within thirty (30) days after receipt of an application, review such application and determine whether it is administratively complete or there is any deficiency in the application or information submitted. To be deemed administratively complete, the application must meet the requirements of 20.2.74.301 NMAC in addition to the requirements of 20.2.72 NMAC. If the application is deemed:

(1) administratively complete, a letter to that effect shall be sent by certified mail to the applicant.

(2) administratively incomplete, a letter shall be sent by certified mail to the applicant stating what additional information or points of clarification are necessary to deem the application administratively complete. Upon receipt of the additional information or clarification, the Department shall promptly review such information and determine whether the application is administratively complete.

(3) administratively complete but no permit is required, a letter shall be sent by certified mail to the applicant informing the applicant of the determination.

B. For purposes of determining minor source baseline date pursuant to 40 CFR 51:

(1) An application is complete when it contains all the information necessary for processing the application. Designating an application complete for purposes of 40 CFR 51 does not preclude the Department from requesting or accepting any additional information; and

(2) In the event that additional information is submitted to remedy any deficiency in the application or information submitted, the date of receipt of the application shall be the date on which the Department received all required information.

C. The Department shall:

(1) Make a preliminary determination whether construction should be approved, approved with conditions, or disapproved.

(2) Make available at the Department district and local office nearest to the proposed source a copy of all materials the applicant submitted, a copy of the preliminary determination, and a copy or summary of other materials, if any, considered in making the preliminary determination.

(3) Notify the public by advertisement in a newspaper of general circulation in the area in which the proposed source would be constructed:

(a) Of the application,

(b) The preliminary determination,

(c) The degree of increment consumption that is expected from the source or modification, and

(d) Of the opportunity for comment at a public hearing as well as written public comment. The public comment period shall be for thirty (30) days from the date of such advertisement.

(4) Send a copy of the notice of public comment to:

(a) The applicant,

(b) The Administrator, and

(c) Officials and agencies having jurisdiction over the location where the proposed construction would occur as follows:

(i) Any other state or local air pollution control agencies;

(ii) The chief executives of the city and county where the source would be located;

(iii) Any comprehensive regional land use planning agency; and

(iv) Any state, Federal Land Manager, or Indian governing body whose lands may be affected by emissions from the source or modification.

(5) Provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the source and other appropriate considerations.

(6) Consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearing(s) in making a final decision on the approvability of the application. The Department shall make all comments available for public inspection in the same locations where the Department made available preconstruction information relating to the source.

(7) Within one hundred eighty (180) days after an application is deemed administratively complete, unless the Secretary, as specified in 20.2.72.207 NMAC, grants an extension not to exceed ninety (90) days for good cause:

(a) make a final determination of whether construction should be approved, approved with conditions, or disapproved; and

(b) notify the applicant in writing of the final determination and make such notification available for public inspection at the same location where the Department made available preconstruction information and public comments relating to the source.

[07/20/95; 01/01/00; 20.2.74.400 NMAC - Rn, 20 NMAC 2.74.400, 10/31/02]

20.2.74.401 STACK HEIGHT CREDIT: The Department shall review all applications in accordance with the provisions of 20.2.80 NMAC (Stack Heights) (formerly Air Quality Control Regulation 710 -- Stack Height Requirements).

[07/20/95; 20.2.74.401 NMAC - Rn, 20 NMAC 2.74.401, 10/31/02]

20.2.74.402 EXCLUSIONS FROM INCREMENT CONSUMPTION: Following a public hearing, the Secretary may exclude the following concentrations in determining compliance with a maximum allowable increase:

A. Concentrations due to the increase in emissions from stationary sources, over the emissions from such sources before the effective date of an order under sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation). Sources must have converted from the use of petroleum products, natural gas, or both by reason of such order. This exclusion shall not apply more than five (5) years after the effective date of such an order; or

B. Concentrations due to the increase in emissions from sources, over the emissions from such sources before the effective date of a plan in effect pursuant to the Federal Power Act. Sources must have converted

from using natural gas by reason of a natural gas curtailment plan. This exclusion shall not apply more than five (5) years after the effective date of such a plan; or

C. Concentrations of particulate matter due to the increase in emissions from construction or other temporary emission-related activities of new or modified sources; or

D. The increase in concentrations due to new sources outside the United States over the concentrations attributed to existing sources which are included in the baseline concentrations.
[07/20/95; 20.2.74.402 NMAC - Rn, 20 NMAC 2.74.402, 10/31/02]

20.2.74.403 ADDITIONAL REQUIREMENTS FOR SOURCES IMPACTING CLASS I FEDERAL AREAS:

A. The Department shall transmit to the Administrator and the Federal Land Manager a copy of each permit application relating to a major stationary source or major modification proposing to locate within one hundred (100) kilometers of any Class I Federal area. The complete permit application shall be transmitted within thirty (30) days of receipt and sixty (60) days prior to any public hearing on the application. The Department shall include all relevant information in the permit application. Relevant information shall include an analysis of the proposed source's anticipated impacts on visibility in the Class I Federal area. The Department shall consult with all affected Federal Land Managers as to the completeness of the permit application and shall consider any analysis performed by the Federal Land Manager concerning the impact of the proposed major stationary source or major modification on air quality related values. This consideration shall include visibility, if such analysis is received within thirty (30) days after the Federal Land Manager receives a copy of the complete application. Additionally, the Department shall notify any affected Federal Land Manager within thirty days (30) from the date the Department receives a request for a pre-application meeting from a proposed source subject to this Part. Notice shall be provided to the Administrator and Federal Land Manager of every action related to the consideration of such permit. The department shall also provide the Federal Land Manager and the Administrator with a copy of the preliminary determination required under 20.2.74.400 NMAC and shall make available to them any materials used in making that determination. In any case where the Department disagrees with the Federal Land Manager's analysis of source impact on air quality related values, the Department shall, either explain its decision or give notice to the Federal Land Manager as to where the explanation can be obtained. In the case where the Department disagrees with the Federal Land Managers' analysis, the Department will also explain its decision or give notice to the public by advertisement in a newspaper of general circulation in the area in which the proposed source would be constructed, as to where the decision can be obtained.

B. The Department shall transmit to air quality control agencies of neighboring states and Indian governing bodies a copy of each permit application having the potential to affect Class I Federal areas or increment consumption in areas under their jurisdiction. The Department shall also provide the affected air quality control agencies and Indian governing bodies with a copy of the preliminary determination required under 20.2.74.400 NMAC and shall make available to them any materials used in making that determination. The Department shall include a provision for a sixty (60) day comment period for the Federal Land Managers before any public hearing on a permit application is held.

C. Federal Land Managers may demonstrate to the Department that emissions from a proposed source or modification would have an adverse impact on air quality related values, including visibility, of any Class I Federal lands under their jurisdiction. This may be done even though the change in air quality resulting from emissions from the proposed source or modification would not cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I Federal area. If the Department concurs with this demonstration, then the source shall not be issued a permit.

D. Class I Waivers: The owner or operator of a proposed source or modification may demonstrate to the Federal Land Manager that the emissions from a proposed source or modification would have no adverse impact on air quality related values, including visibility, of Class I Federal lands under his or her jurisdiction. This may be done even though the change in air quality resulting from emissions from such source or modification would cause or contribute to concentrations which would exceed the maximum allowable increases for a Class I Federal area. If the Federal Land Manager concurs with such demonstration and so certifies to the Department, the Department may grant a waiver from such maximum allowable increases. Emission limitations must be included in the permit as necessary to assure that emissions of sulfur dioxide, particulate matter, and nitrogen oxides would not exceed the maximum allowable increases over minor source baseline concentrations shown in Table 5 of this Part (20.2.74.505 NMAC).

E. For the case where the Federal Land Manager does not perform an impact analysis with respect to visibility impairment in a Class I Federal area, the Department may perform such an analysis. The Department shall

not issue the source a permit if the Department determines that an adverse impact on visibility would occur. The adverse impact must be due, primarily, to the operation of the proposed source or modification.

F. Sulfur Dioxide Waiver by Governor: The owner or operator of a proposed major stationary source or major modification, which cannot be approved under subsection D of 20.2.74.403 NMAC, may demonstrate to the Governor that the source cannot be constructed by reason of an exceedance of a maximum allowable increase for a Class I Federal area for sulfur dioxide for a period of twenty-four (24) hours or less. The owner or operator may also demonstrate that a waiver from this requirement would not adversely affect the air quality related values of the Class I Federal area. The Governor, after consideration of the Federal Land Manager's recommendation and subject to his concurrence, may, after notice and public hearing, grant a waiver from such maximum allowable increase. If the waiver is granted, the Department shall issue a permit to the owner or operator of the source or modification. Any owner or operator of a source or modification who obtains a permit under this section shall comply with sulfur dioxide emissions limitations. These limitations do not allow increases of ambient concentrations, above the baseline concentration, to exceed the levels found in Table 6 of this Part (20.2.74.506 NMAC) for periods of twenty-four (24) hours or less for more than eighteen (18) days, not necessarily consecutive, in any annual period.

G. Sulfur Dioxide Waiver by Governor with the President's Concurrence. In any case where the Governor recommends a waiver in which the Federal Land Manager does not concur, the recommendations of the Governor and the Federal Land Manager shall be transmitted to the President through the office of the Governor. If the President so directs, the Department shall issue the permit. Any source or modification that obtains a permit under this section shall comply with sulfur dioxide emissions limitations. These limitations do not allow increases in ambient concentrations, above the baseline concentration, to exceed the levels found in Table 6 of this Part (20.2.74.506 NMAC) for periods of twenty-four (24) hours or less for more than eighteen (18) days, not necessarily consecutive, in any annual period.

[07/20/95; 20.2.74.403 NMAC - Rn, 20 NMAC 2.74.403, 10/31/02]

20.2.74.404 to 20.2.74.500 [RESERVED]

20.2.74.501 TABLE 1 - PSD SOURCE CATEGORIES.

A. Carbon black plants (furnace process)
B. Charcoal production plants
C. Chemical process plants
D. Coal cleaning plants (with thermal dryers)
E. Coke oven batteries
F. Fossil fuel boilers (or combinations thereof) totaling more than 250 million BTU/hr heat input
G. Fossil fuel-fired steam electric plants of more than 250 million BTU/hr heat input
H. Fuel conversion plants
I. Glass fiber processing plants
J. Hydrofluoric acid plants
K. Iron and steel mills
L. Kraft pulp mills
M. Lime plants
N. Municipal incinerators capable of charging more than 50 tons of refuse per day
O. Nitric acid plants
P. Petroleum refineries
Q. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels
R. Phosphate rock processing plants
S. Portland cement plants
T. Primary aluminum ore reduction plants
U. Primary copper smelters
V. Primary lead smelters
W. Primary zinc smelters
X. Secondary metal production plants
Y. Sintering plants
Z. Sulfur recovery plants
AA. Sulfuric acid plants
AB. Taconite ore processing plants

[07/20/95; 20.2.74.501 NMAC - Rn, 20 NMAC 2.74 Table 1, 10/31/02; A, 1/22/06]

20.2.74.502 TABLE 2 - SIGNIFICANT EMISSION RATES:

POLLUTANT	EMISSION RATE (TONS/YR)
Carbon monoxide	100
Fluorides	3
Lead	0.6
Municipal waste combustor Acid gases (measured as sulfur dioxide and hydrogen chloride) Metals (measured as particulate matter Organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	 40 (36 megagrams/year) 15 (14 megagrams/year) 0.0000035 (0.0000032 megagrams/yr)
Nitrogen oxides	40
Ozone (Volatile Organic Compounds or nitrogen oxides)	40
Particulate Matter Particulate matter emissions PM-10 emissions	 25 15
Sulfur compounds Hydrogen sulfide (H2S) Reduced sulfur compounds (incl. H2S) Sulfur dioxide Sulfuric acid mist Total reduced sulfur (incl. H2S)	 10 10 40 7 10
Any other pollutant regulated under the act that is not listed in this table	Any emission rate
Each regulated pollutant	Emission rate or net emissions increase associated with a major stationary source or major modification that causes an air quality impact of one microgram per cubic meter or greater (24-hr average) in any class I federal area located within 10 km of the source.

[07/20/95; 20.2.74.502 NMAC - Rn, 20 NMAC 2.74 Table 2, 10/31/02; A, 1/22/06; A, 8/31/09]

20.2.74.503 TABLE 3 - SIGNIFICANT MONITORING CONCENTRATIONS.

POLLUTANT	AIR QUALITY CONCENTRATION micrograms per cubic meter	AVERAGING TIME
Carbon monoxide	575	8 hours
Fluorides	0.25	24 hours
Lead	0.1	3 months
Nitrogen dioxide	14	Annual
Ozone	b	
Particulate matter (PM-10)	10	24 hours
Sulfur compounds Hydrogen sulfide (H2S) Reduced sulfur compounds (incl. H2S) Sulfur dioxide Sulfuric acid mist Total reduced sulfur (incl. H2S)	 0.20 10 13 a 10	 1 hour 1 hour 24 hours 1 hour
a - No acceptable monitoring techniques available at this time. Therefore, monitoring is not required until acceptable techniques are available.		
b - No de minimis air quality level is provided for ozone. However, any net increase of 100 tons per year or		

more of volatile organic compounds or nitrogen oxides subject to PSD would be required to perform an ambient impact analysis, including the gathering of ambient air quality data.

[07/20/95; 20.2.74.503 NMAC - Rn, 20 NMAC 2.74 Table 3, 10/31/02; A, 1/22/06; A, 8/31/09]

20.2.74.504 TABLE 4 - ALLOWABLE PSD INCREMENTS:

	Micrograms per cubic meter ($\mu g/m^3$)		
	Class I	Class II	Class III
Nitrogen Dioxide annual arithmetic mean	2.5	25	50
Particulate Matter PM_{10}, annual arithmetic mean PM_{10}, 24-hour maximum	4 8[a]	17 30[a]	34 60[a]
Sulfur Dioxide annual arithmetic mean 24-hour maximum 3-hour maximum	2 5[a] 25[a]	20 91[a] 512[a]	40 182[a] 700[a]
a - Not to be exceeded more than once a year.			

[07/20/95; 20.2.74.504 NMAC - Rn, 20 NMAC 2.74 Table 4, 10/31/02]

20.2.74.505 TABLE 5 - MAXIMUM ALLOWABLE INCREASES FOR CLASS I WAIVERS:

	Micrograms per cubic meter ($\mu g/m^3$)
Nitrogen Dioxide annual arithmetic mean	25
Particulate Matter PM_{10}, annual arithmetic mean PM_{10}, 24-hour maximum	17 30
Sulfur Dioxide annual arithmetic mean 24-hour maximum 3-hour maximum	20 91 325

[07/20/95; 20.2.74.505 NMAC - Rn, 20 NMAC 2.74 Table 5, 10/31/02]

20.2.74.506 TABLE 6 - MAXIMUM ALLOWABLE INCREASE FOR SULFUR DIOXIDE WAIVER BY GOVERNOR:

	Micrograms per cubic meter ($\mu g/m^3$) Terrain Areas	
Period of Exposure	Low	High
24-hr. maximum	36	62
3-hr. maximum	130	221

[07/20/95; 20.2.74.506 NMAC - Rn, 20 NMAC 2.74 Table 6, 10/31/02]

HISTORY OF 20.2.74 NMAC:

Pre NMAC History: The material in this part was derived from that previously filed with the commission of public records - state records center and archives.

EIB/AQCR 707, Air Quality Control Regulation 707 - Permits, Prevention Of Significant Deterioration (PSD), 02/14/84;

EIB/AQCR 707, Air Quality Control Regulation 707 - Permits, Prevention Of Significant Deterioration (PSD), 07/15/86;
EIB/AQCR 707, Air Quality Control Regulation 707 - Permits, Prevention Of Significant Deterioration (PSD), 08/01/88;
EIB/AQCR 707, Air Quality Control Regulation 707 - Permits, Prevention Of Significant Deterioration (PSD), 05/29/90.

History of Repealed Material: [RESERVED]

Other History:
EIB/AQCR 707, Air Quality Control Regulation 707 - Permits, Prevention Of Significant Deterioration (PSD), filed 05/29/90 was **renumbered** into first version of the New Mexico Administrative Code as 20 NMAC 2.74, Permits -- Prevention Of Significant Deterioration (PSD), filed 06/20/95.
20 NMAC 2.74, Permits -- Prevention Of Significant Deterioration (PSD), filed 06/20/95 was **renumbered, reformatted and replaced** by 20.2.74 NMAC, Permits -- Prevention Of Significant Deterioration (PSD), effective 10/31/02.

Clean Air Act Permitting for Greenhouse Gas Emissions – Final Rules

FACT SHEET

ACTION

- On December 23, 2010, the U.S. Environmental Protection Agency (EPA) issued a series of rules that put the necessary regulatory framework in place to ensure that 1) industrial facilities can get Clean Air Act permits covering their greenhouse gas (GHG) emissions when needed and 2) facilities emitting GHGs at levels below those established in the Tailoring Rule do not need to obtain federal Clean Air Act permits.

- On January 2, 2011, EPA's GHG emissions standards for light-duty vehicles take effect. On that date, permits issued under the Clean Air Act permitting programs for large stationary sources – the Prevention of Significant Deterioration (PSD) and the Title V Operating Permit Programs – must begin to address GHGs.

- Last April, EPA issued the tailoring rule to ensure that only the largest sources of GHGs, those responsible for 70 percent of the GHG pollution from stationary sources, would require air permits.

- EPA has been working with state local agencies since that time to make sure that:
    - All permitting agencies have the authority to permit GHGs or are on the path to have such authority, with EPA serving as the permitting authority in the interim, and
    - Only those sources identified in the tailoring rule—the largest emitters of GHGs- are required to obtain permits.

- The rules signed today address these critical permitting program components and ensure that new and expanding facilities in all states can seek permits for greenhouse gas emissions.

Rules Ensuring Authority to Permit GHGs under the PSD Permitting Program

- One set of rules signed today will give EPA authority to permit GHG emissions in the PSD program in eight states until the identified state and local agencies revise their permitting regulations to cover GHGs as defined in the Tailoring Rule. These rules include:
    - Findings of Failure to Submit State Implementation Plan Changes for Seven States
    - Final Greenhouse Gas Prevention of Significant Deterioration Federal Implementation Plan
    - Interim Final Texas Greenhouse Gas Prevention of Significant Deterioration Error Correction, State Implementation Plan Partial Approval/Disapproval, and Federal Implementation
    - Proposed Texas Greenhouse Gas Prevention of Significant Deterioration Error Correction, State Implementation Plan Partial Approval/Disapproval, and Federal Implementation

- In a December 1, 2010 final rule, EPA found that PSD permitting regulations in 13 states do not meet Clean Air Act requirements because their programs currently do not cover GHG emissions. EPA also issued a "SIP call," which requires these states to revise their programs

NMED EXHIBIT 6

to ensure that their PSD programs cover GHG emissions. This rule also established the dates these 13 states have selected for submitting their revised permitting plans to EPA, which range from December 22, 2010 to December 1, 2011.

- Seven states, including 8 permitting programs, opted for the earliest SIP submittal deadline – December 22, 2010. These include: Pinal County, Arizona; the rest of the state of Arizona excluding some other local permitting programs); Arkansas; Florida; Idaho; Kansas; Oregon; and Wyoming.
    - These programs did not submit revised programs by December 22. EPA is finding that these programs have failed to submit revised SIPs by their selected deadline and is issuing a Federal Implementation Plan (FIP) giving EPA the authority to issue PSD permits for GHGs in these states until they submit a revised plan that is approved by the Agency.

- The other five agencies, Kentucky, Clark County Nevada, Connecticut, parts of California, and Nebraska will submit their plans shortly after the beginning of 2011 but do not expect to need to act on permits between January 2011 and their anticipated plan approval dates.

- The state of Texas did not select a SIP submittal date and, under the Clean Air Act, defaults to the latest possible date – December 1, 2011 - one year later. EPA is issuing a complementary series of actions today that will assure PSD permitting in Texas can continue during this time without disruption for GHG emitting sources.

- EPA is determining that it made an error when it originally approved the Texas PSD permitting SIP because the state of Texas did not address how the program will apply to pollutants newly subject to regulation and did not provide assurances that the program has adequate legal authority to apply to such pollutants. Under the error correction provisions of the Clean Air Act, EPA is converting that previous approval to a partial approval and partial disapproval. This partial disapproval of the Texas PSD SIP allows EPA to issue a Federal Implementation Plan that gives EPA the authority to apply federal PSD permitting requirements to large sources of GHGs in Texas. This action is appropriate because the state of Texas has made it clear that it will not apply PSD permitting requirements to GHGs.

- So that there will be no period of time when businesses in Texas are unable to obtain the necessary permits, EPA is partially disapproving the Texas PSD SIP and implementing the Federal plan as an interim final rule. This will allow the action to become effective immediately on an interim basis. EPA also issued a proposal to allow for public comment on this action.

- States are best-suited to issue permits to sources of GHG emissions. They have longstanding experience working together with industrial facilities under their jurisdiction to process PSD permit applications. EPA intends to delegate the authority to issue GHG permits to states if requested. EPA will continue to provide guidance and act as a resource for the states as we work together to make the various required permitting decisions for GHG emissions.

Rules Focusing GHG Permitting Initially on the Largest Sources

- In a second set of actions, EPA has issued two final rules that will focus Clean Air Act permitting for GHGs on the largest emissions sources including electric generating units, cement production facilities, and petroleum refineries. These rules include:
    - Final State Implementation Plan Narrowing rule for Prevention of Significant Deterioration Permitting for Greenhouse Gases
    - Final Title V Permitting Programs Under the Greenhouse Gas Tailoring Rule

- With these "narrowing" rules in place, federal rules will not require states to permit sources with GHG emissions below those established in the Tailoring Rule even if they have not been able to adopt the new levels into their SIP or approved operating permit program.

- EPA has encouraged states to modify their state laws as soon as possible to ensure that sources emitting GHG at levels below those established in the GHG Tailoring Rule are not required to seek permits under state laws.

Prevention of Significant Deterioration Permit Narrowing Rule

- The first of these rules applies to certain states' PSD permitting regulations contained in their state implementation plans or "SIPs". This final rule withdraws EPA's previous approval for the portions of SIPs in 24 states' regulations that apply PSD permitting to sources with GHG emissions lower than those required by the GHG Tailoring Rule. The states included in this final action are:

  Alabama, California, Colorado, Georgia, Indiana, Iowa, Louisiana, Maine, Maryland, Mississippi, Missouri, New Hampshire, New Mexico, North Carolina, Ohio, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, and Wisconsin.

- EPA is narrowing its previous SIP approvals because these states' plans require PSD permits for GHG emissions at levels below the thresholds established in the Tailoring Rule, and yet they do not provide assurances that the states would have the resources to issue PSD permits for the thousands of sources that would need permits for emissions at those levels. These inadequate assurances made EPA's approval of these SIPs flawed, and EPA is now addressing that flaw.

Title V Operating Permit Program

- In the second "narrowing rule" signed today, EPA is limiting its previous approval of title V operating permit programs in 33 states including:

  Alabama, California, Colorado, District of Columbia, Georgia, Hawaii, Illinois, Iowa, Kansas, Louisiana, Maine, Maryland, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virgin Islands, Virginia, Washington, West Virginia, and Wisconsin

- The GHG Tailoring Rule requires title V permits for major sources with GHG emissions of 100,000 tons per year (tpy) or more of carbon dioxide equivalents (CO_2e). Many state and local programs generally require title V permitting at major source thresholds as low as 100 tpy for any air pollutant.

- EPA is narrowing its previous operating permit approvals because these programs may impose a title V permitting requirement on major sources of GHG but they do not have the ability to adequately permit sources below the Tailoring Rule thresholds.

BACKGROUND

- On April 2, 2007, the Supreme Court found that GHGs, including carbon dioxide, are air pollutants covered by the CAA. Massachusetts v. EPA, 549 U.S. 497 (2007). The Court found that EPA was required to determine whether or not emissions of GHGs from new motor vehicles cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare, or whether the science is too uncertain to make a reasoned decision.

- On December 7, 2009, the EPA Administrator signed two distinct findings regarding GHGs under the CAA:
    - Endangerment Finding: The Administrator found that the current and projected atmospheric concentrations of the six key well-mixed GHGs – CO2, CH4, N2O, HFCs, PFCs, and SF6 – threaten the public health and welfare of current and future generations.
    - Cause or Contribute Finding: The Administrator found that the combined emissions of these well-mixed GHGs from new motor vehicles and new motor vehicle engines contribute to greenhouse gas pollution, which threatens public health and welfare.

  These findings, published December 15, 2009, do not impose any requirements on industry or other entities. They were, however, a prerequisite to finalizing the GHG standards for light-duty vehicles.

- On December 18, 2008, EPA issued a memorandum, "EPA's Interpretation of Regulations that Determine Pollutants Covered by Federal Prevention of Significant Deterioration (PSD) Permit Program" (known as the "Johnson Memo" or the "PSD Interpretive Memo"). Whether a pollutant is "subject to regulation" is important for the purposes of determining whether it is covered under the CAA permitting programs. The PSD Interpretive Memo established that a pollutant is "subject to regulation" only if it is subject to either a provision in the CAA or regulation adopted by EPA under the CAA that requires actual control of emissions of that pollutant. On February 17, 2009, EPA granted a petition for reconsideration of this memorandum.

- On March 29, 2010, the Administrator signed a notice conveying the Agency's decision to continue applying the PSD Interpretive Memo's interpretation of "subject to regulation." EPA concluded that the "actual control interpretation" is the most appropriate interpretation. The Agency established that CAA permitting requirements apply to a newly regulated pollutant at the time a regulatory requirement to control emissions of that pollutant "takes effect" (rather than upon promulgation or the legal effective date of the regulation containing such a requirement). Based on the anticipated promulgation of the light-duty vehicle rule, the notice stated that the GHG requirements of the light-duty vehicle rule would trigger CAA permitting requirements for stationary sources on January 2, 2011.

- EPA published the Light-Duty Vehicle (LDVR) on May 7, 2010. The LDVR rule established standards for certain greenhouse gases emitted by new light duty motor vehicles, commencing with model year 2012 vehicles. These vehicles may be introduced into commerce beginning on January 2, 2011. Taken in conjunction with the operation of the Clean Air Act and with other recent EPA actions, this means that GHG emissions become "regulated pollutants" as of that date. More specifically, EPA's related actions established that PSD requirements apply to GHG emissions from stationary sources beginning on January 2, 2011.

- On May 13, 2010, EPA issued the final GHG Tailoring Rule. This rule effectively raised the thresholds for GHG emissions that define when permits under the PSD and Title V Operating Permit programs are required for new and existing industrial facilities. Without the GHG Tailoring Rule, the thresholds established in the CAA for other pollutants would apply to GHGs. The phased in approach, established in the Tailoring Rule, provides time for large industrial facilities and state governments to develop the capacity to implement permitting requirements for GHGs.
    - Starting in January 2011, large industrial facilities that must already obtain Clean Air Act permits for non-GHGs must also include GHG requirements in these permits if they are newly constructed and have the potential to emit 75,000 tons per year of carbon dioxide equivalent (CO2e) or more or if they make changes at the facility that increase GHG emissions by that amount.
    - Starting in July 2011, in addition to facilities described above, all new facilities emitting GHGs in excess of 100,000 tons of per year CO2e and facilities making changes that would increase GHG emissions by at least 75,000 tpy CO2e, and that also exceed 100/250 tons per year of GHGs on a mass basis, will be required to obtain permits that address GHG emissions
    - Operating permits will be needed by all sources that emit at least 100,000 tons of GHG per year on a CO2e basis beginning in July 2011.
    - Sources less than 50,000 tons of GHGs per year on a CO2e basis will not be required to obtain permits for GHGs before 2016.

    - These permitting programs are proven tools for reducing air pollution, and can be used to control GHG emissions. However, the thresholds established in the Clean Air Act for other air pollutants, 100 and 250 tons per year, were based on traditional pollutants, such as particle pollution and nitrogen dioxide. PSD and title V requirements for GHGs at these thresholds would lead to dramatic increases in the number of required permits — tens of thousands of PSD permits and millions of title V permits. State and local permitting authorities would be overwhelmed and the programs' abilities to manage air quality would be severely impaired.

- The proposed Tailoring Rule (74 FR 55292, October 27, 2009) included a proposal to narrow EPA's approval of the SIPs and title V programs that cover sources of GHG emissions at levels below the thresholds in the Tailoring Rule. EPA recognized that most of the PSD SIPs and title V programs would otherwise continue to apply only the statutory thresholds for GHGs until revised, and some states would not have sufficient time to complete the SIP and program revision process before permitting was triggered.

- The final GHG Tailoring Rule did not address the SIP and title V narrowing proposal. Instead, in the final Tailoring Rule, EPA requested states to submit information so that the Agency could determine if it was still necessary to finalize the SIP and title V narrowing proposal.

- Most states responded that they will be able to permit GHG consistently with the Tailoring Rule by January 2, 2011, by modifying state laws and permitting regulations on an expedited schedule. Even so, many states will not be able to complete their submittal with enough time for EPA to approve them prior to January 2, 2011.

FOR MORE INFORMATION

- To download a copy of these notices, go to EPA's Web site at: http://www.epa.gov/nsr.

- Today's actions and other background information are also available electronically at http://www.regulations.gov, EPA's electronic public docket and comment system. The docket numbers and staff contacts for each action include:
  - Notice of Findings of Failure to Submit State Implementation Plan Changes for Seven States
    - EPA-HQ-OAR-2010-0107
    - Lisa Sutton – sutton.lisa@epa.gov, 919-541-3450

  - Final Greenhouse Gas Prevention of Significant Deterioration Federal Implementation Plan
    - Docket ID No. EPA-HQ-OAR-2010-0107
    - Cheryl Vetter – vetter.cheryl@epa.gov, 919-541-4391

  - Interim Final Texas Greenhouse Gas Prevention of Significant Deterioration Error Correction, State Implementation Plan Partial Approval/Disapproval, and Federal Implementation Plan
    - Docket ID No. EPA-HQ-OAR-2010-1033
    - Peter Keller – interim final rule – keller.peter@epa.gov, 919-541- 5339

  - Proposed Texas Greenhouse Gas Prevention of Significant Deterioration Error Correction, State Implementation Plan Partial Approval/Disapproval, and Federal Implementation Plan
    - Docket ID No. EPA-HQ-OAR-2010-1033
    - Cheryl Vetter – proposed rule – vetter.cheryl@epa.gov, 919-541-4391

  - Final State Implementation Plan Narrowing rule for Prevention of Significant Deterioration Permitting for Greenhouse Gases:
    - Docket ID No. EPA-HQ-OAR-2009-0517
    - Michael Brooks – brooks.michaels@epa.gov, 919-541-3539

  - Final Title V Permitting Programs Under the Greenhouse Gas Tailoring Rule
    - Docket ID No. EPA-HQ-OAR-2010-0107
    - Jeff Herring – herring.jeff@epa.gov, 919-541-3195

Final Rule - Deferral for CO_2 emissions from Bioenergy and Other Biogenic Sources under the Prevention of Significant Deterioration (PSD) and Title V Programs

FACT SHEET

ACTION

- This final action defers, for a period of three years, the application of the Prevention of Significant Deterioration (PSD) and Title V permitting requirements to carbon dioxide (CO_2) emissions from bioenergy and other biogenic stationary sources (biogenic CO_2).

- This is one of several steps the Agency is taking to address the issues associated with biogenic CO_2 emissions from stationary sources.

- During this three year deferral period, EPA will conduct a detailed examination of the science associated with biogenic CO_2 emissions from stationary sources. This study will consider technical issues that the Agency must resolve in order to account for biogenic CO_2 emissions in ways that are scientifically sound and also manageable in practice. Later this year, EPA will send the study to the Science Advisory Board for peer review.

BACKGROUND

- On January 12, 2011, EPA announced in letters to Members of Congress and the National Alliance of Forest Owners (NAFO) its intent to take this action as well as a number of related steps to address the issues associated with biogenic CO_2 emissions from stationary sources. The full list of steps EPA outlined in that letter are:
    - Granting the Petition for Reconsideration filed by NAFO on August 3, 2010, related to the PSD and Title V Greenhouse Gas (GHG) Tailoring Rule (75 FR 31514, June 3, 2010) ("Tailoring Rule").
    - Issuing today's final rulemaking to defer for three years the application of the PSD and Title V permitting requirements to biogenic CO_2 emissions from stationary sources. The proposal for this rulemaking was issued on March 11, 2011.
        - Earlier this year, with the proposed deferral, EPA issued interim guidance on how biogenic CO_2 emissions from stationary sources should be treated by permitting authorities until final decisions are made.
    - Undertaking a detailed examination of the science associated with biogenic CO_2 emissions from stationary sources. This study will consider technical issues that the Agency must resolve in order to account for biogenic CO_2 emissions in ways that are scientifically sound and also manageable in practice.
    - Developing a final rule by the conclusion of the three year deferral period regarding how biogenic CO2 emissions should be treated and accounted for in PSD and Title V permitting based on the feedback from the scientific and technical review.

- Biogenic CO_2 emissions are defined as emissions of CO_2 from a stationary source directly resulting from the combustion or decomposition of biologically-based materials other than fossil fuels and mineral sources of carbon. Examples include, but are not limited to:
    - CO_2 generated from the biological decomposition of waste in landfills, wastewater treatment or manure management processes;
    - CO_2 from the combustion of biogas collected from biological decomposition of waste in landfills, wastewater treatment or manure management processes;

- CO_2 from fermentation during ethanol production;
- CO_2 from combustion of the biological fraction of municipal solid waste or biosolids;
- CO_2 from combustion of the biological fraction of tire-derived fuel; and
- CO_2 derived from combustion of biological material, including all types of wood and wood waste, forest residue, and agricultural material.

- The PSD program is a preconstruction review and permitting program applicable to "new major stationary sources" and "major modifications" at existing major stationary sources. The Title V permit program establishes operating permit requirements that are intended to improve sources' compliance with other CAA requirements. The applicability to both programs is dependent on whether the stationary source meets certain emissions thresholds.

- On June 3, 2010, EPA issued the Tailoring Rule and established two steps to implement PSD and Title V.
  - Tailoring Rule Step 1 began on January 2, 2011. Step 1 applies to sources subject to PSD or Title V anyway due to their emissions of other pollutants ("anyway" sources) and that have the potential to emit 75,000 tpy CO_{2e} (or increase emissions by that amount for modifications);
    Tailoring Rule Step 2 begins on July 1, 2011. In addition to anyway sources, Step 2 applies to new facilities emitting GHGs in excess of 100,000 tpy CO_{2e} and facilities making changes that would increase GHG emissions by at least 75,000 tpy CO_2e, and that also exceed 100/250 tpy of GHGs on a mass basis.

NEXT STEPS AND IMPLEMENTATION

- This final rule will be published in the *Federal Register* shortly and will be available at: www.regulations.gov.
- The guidance and a prepublication copy of the rule are available on our Web site at: http://www.epa.gov/nsr

MORE INFORMATION

For more information on the PSD and Title V programs and the July 2010 Call for Information on CO2 emissions associated with bioenergy and other biogenic sources, please visit EPA's website: http://www.epa.gov/nsr and
http://www.epa.gov/climatechange/emissions/biogenic_emissions.html

FACT SHEET

Final Rule - Prevention of Significant Deterioration and Title V Operating Permit Greenhouse Gas (GHG) Tailoring Rule Step 3 and GHG Plantwide Applicability Limits

Action

- On June 29, 2012 the U.S. Environmental Protection Agency (EPA) issued a final rule that does not revise the greenhouse gas (GHG) permitting thresholds that were established in Step 1 and Step 2 of the GHG Tailoring Rule. These emissions thresholds determine when Clean Air Act permits under the New Source Review Prevention of Significant Deterioration (PSD) and title V Operating Permit programs are required for new and existing industrial facilities.

- This is the third step in EPA's phased-in approach to greenhouse gas permitting under the Clean Air Act. Currently, new facilities with GHG emissions of at least 100,000 tons per year (tpy) carbon dioxide equivalent (CO2e) and existing facilities with at least 100,000 tpy CO2e making changes that would increase GHG emissions by at least 75,000 tpy CO2e are required to obtain PSD permits. Facilities that must obtain a PSD permit anyway, to cover other regulated pollutants, must also address GHG emissions increases of 75,000 tpy CO2e or more. New and existing sources with GHG emissions above 100,000 tpy CO2e must also obtain operating permits.

- The current applicability thresholds, established under Step 2 of the GHG Tailoring Rule, went into effect on July 1, 2011.

- After evaluating comments on the proposed rule, and assessing the progress of GHG permitting to date, EPA has determined that state permitting authorities have not had sufficient time to develop necessary permitting infrastructure and to increase their GHG permitting expertise and capacity. By the same token, EPA and the state permitting authorities have not had the opportunity to develop and implement streamlining approaches. Therefore, t this time, it is not appropriate to apply PSD and title V permitting requirements to additional, smaller sources of GHG emissions.

- EPA is also finalizing an approach to assist state and local permitting authorities in streamlining the administration of PSD permits for GHGs. This action will improve the usefulness of plantwide applicability limitations (PALs) for GHG emissions by allowing GHG PALs to be established on a CO_2e basis in addition to the already available mass-basis.

- A PAL is an emissions limit applied sourcewide rather than to specific emissions points. With a PAL, a source can make changes to the facility without triggering PSD permitting requirements as long as emissions do not increase above the limit established by the PAL. This would allow companies to respond rapidly to changing market conditions while protecting the environment. EPA is also revising its regulations to allow a source that emits or has the potential to emit GHGs at levels above 100,000 tpy CO_2e but that have emissions of other regulated pollutants at minor source levels to apply for a GHG PAL while still maintaining its minor source status.

NMED
EXHIBIT 8

Background

- On May 13, 2010, the EPA issued the Tailoring Rule, which establishes a common sense approach to addressing greenhouse gas emissions from stationary sources under the Clean Air Act (CAA) permitting programs. This final rule set the thresholds for Steps 1 and 2 of a phase-in approach to regulating GHG emissions under the PSD and title V Operating Permit programs.

- Under Step 1 of the Tailoring Rule, PSD requirements applied to sources' GHG emissions if the sources were subject to PSD anyway due to their non-GHG regulated air pollutants ("anyway" sources) and emit or have the potential to emit at least 75,000 tpy CO_2e. For title V, existing sources with, or new sources obtaining, title V permits are required to address GHG emissions in those permit as necessary.

- Under Step 2, PSD applies to the largest GHG-emitting sources that are not "anyway" sources and that are either new sources that emit or have the potential to emit at least 100,000 tpy CO_2e or existing sources that emit at that level and that undertake modifications that increase emissions by at least 75,000 tpy CO_2e, and also emit at least 100/250 tpy of GHGs on a mass basis. In addition, under Step 2, title V applies to existing sources that are not "anyway" sources and that emit or have the potential to emit 100,000 tpy CO_2e.

- For more information about the 2010 Tailoring Rule and subsequent actions, go to http://www.epa.gov/nsr/ghgpermitting.html.

For Further Information:

- To download a copy of the notice, go to EPA's Worldwide Web site at: http://www.epa.gov/nsr/ghgpermitting.html.

- Today's final action and other background information are also available either electronically at http://www.regulations.gov, EPA's electronic public docket and comment system, or in hardcopy at the EPA Docket Center's Public Reading Room.

- The Public Reading Room is located at EPA Headquarters, room number 3334 in the EPA West Building, 1301 Constitution Avenue, NW, Washington, DC. Hours of operation are 8:30 a.m. to 4:30 p.m. eastern standard time, Monday through Friday, excluding Federal holidays.

- Visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor materials will be processed through an X-ray machine as well. Visitors will be provided a badge that must be visible at all times.

- Materials for this final action can be accessed using Docket ID No. EPA-HQ-OAR-2009-0517.

- For more information on the final rule, contact either Mr. Michael Brooks at (919)-541-3539 or email at brooks.michaels@epa.gov.